General Terms and Conditions for the Purchasing of IWK Verpackungstechnik GmbH (Status October 2013)

1. Principal, Application

1.1 The company including these general terms and conditions (IWK Verpackungstechnik GmbH Purchasing Conditions) into a contract will be referred to as the “principal” in the following.

1.2 The IWK Verpackungstechnik GmbH Purchasing Conditions, as well as further contractual conditions indicated in the order confirmations, apply exclusively. Contradictory or differing conditions of the contractor do not apply, even if the service is accepted without reservations and in full awareness of differing conditions stipulated by the contractor.

1.3 Only letters of intent and acts under the law, such as orders, processing requests and contracts (also referred to as “order” in the following) in written form and signed by the principal are deemed legally binding. Furthermore, electronically with an electronic signature (in accordance with § 13 TresG-EbOV (E-biz Code)), unless otherwise agreed.

1.4 All orders on the part of the principal are subject to confirmation. Written confirmation is required for the subject terms of the contract.

1.5 The wording of orders and quotations on the part of the contractor takes place free-of-charge and without commitment, unless otherwise agreed. Realisation is at the discretion of the principal. Inquiries as to the principal contain technical specifications or requirements, therefrom do not release the contractor from his own, thorough validation.

2. Quality Management, Environmental Protection

2.1 The contractor must comply with the requirements of the principal in respect to quality management and environmental protection in accordance with the specifications supplied with the respective order.

2.2 The contractor provides all necessary information with the prerequisites to conduct (preparing into circulation, theทำการหลัก, and the environmentally appropriate disposal of electrical and electronic devices (ElektroG / Elektronische Geräte Act), to the principal regarding obligations. In the principal, and as far as these are not reconceivable – to support the in the fulfillment thereof. In this respect, he specifically undertakes to apply the manufacturer identification for the principal in accordance with § 7 Sentence 2 ElektroG free-of-charge and as per the specification of the principal, as well as to declare the subject matter of the contract with the symbol in accordance with § 7 Sentence 2 ElektroG in annexes 2 of ElektroG as per the orders of the principal.

3. Code of Conduct, Safety Check

3.1 Principal and contractor, in the light of their responsibility to humans, society, and the environment, undertake to comply with the rules of the Code of Conduct, which becomes integrant part of this contract.

3.2 If a definition is designated for a security-sensitive position of the principal, the contractor must ensure to deploy only employees who have been subject to a security check and have been seen to be orderly, in a proper, written declaration.

4. Scope of Services, Prices and Terms of Payment

4.1 The price agreed upon in this contract is considered a fixed price, and includes delivery charges paid to destination. The price covers all transport, insurance, packaging, and other incidental costs and fees to delivery assembly ready-to-operate at

4.2 The price includes the costs for possibly arising services of installation and integration, which are to be performed by the contractor. The provisions of the legal regulations regarding the sealing, testing, and commissioning the service. All services exceeding the scope of the delivered services are subject to further costs.

4.3 For the usage of relevant instructions for the operation, control, usage, and service, or other documents, are to be delivered both to the head office of the principal, as well as the designated destination, and are deemed to be covered by the price of the order.

4.4 All deliveries are to be furnished with a delivery note. Delivery notes and – if expressly agreed – notifications of dispatched must contain the following information:

- Order number, company reference number and date of the order,
- Number of a partial delivery, if applicable,
- Name and address of contractor,
- Date of dispatch,
- Indication regarding the type and scope of the delivery, as well as material identification numbers and item numbers referred to in the order, and
- Mode of dispatch.

4.5 If the billing of services has been agreed upon according to hourly rate, travel and waiting times as well as travel expenses are not compensated separately.

4.6 The billing of services shall start with the receipt of a testable invoice, but not earlier than performance/acceptance of the services. Payment runs of the principal are to be made on the 9th working day after the date of delivery, but not earlier than the 9th working day of the following month. If the principal receives the invoice before or on the 9th working day of a month, payments are made (1) with a cash discount of 3% by the 9th working day of the following month.

4.7 Payment of the invoiced sum without reservation by the principal does not imply the acceptance of the contractor’s service.

5. Default of the Contractor

5.1 In case of default on the part of the contractor, the legal provisions are to be applied, unless determined otherwise in the following:

5.2 In case of delay of delivery, the principal is entitled to claim a contractual penalty at the amount of 0.5 per cent of the order value for each full calendar day of delay, but may not claim more than 5 per cent of the order value. The contractual penalty can be demanded alongside fulfillment of contract. The possible exception of other claim shall remain unaffected.

5.3 The principal is entitled to claim the contractual penalty alongside fulfillment of contract.

5.4 Furthermore, legal entitlements due to default remain enforceable by these provisions.

6. Delay of the Principal

In case of delay on the part of the principal, the legal provisions are applied, providing that the principal is only considered to be in default of payment in situations following receipt of payment for from the contractor.

7. Cancellation or Termination for Cause

7.1 The principal may withdraw from the contract or terminate the contract with immediate effect if insolvency proceedings against the contractor are commenced, or if the commencement thereof has been deemed to be fabricated due to the insolvency assets fall short of the costs associated with the proceedings, or if the orderly processing of the contract appears double as the payments have been suspended on insurmountable basis.

7.2 The principal is entitled to the same rights, as soon as an application for bankruptcy proceedings is received by a court of law.

8. Product Liability

Insofar as the contractor is responsible for damages due to product liability, he undertakes to indemnify the principal against all claims for damages by third parties. The principal will notify the contractor with regards to the assertion of any such claims for damages.

9. Passing of Risk / Acceptance / Inspection for Defects

9.1 For the passing of risk and the transfer of property, the legal provisions apply, unless otherwise agreed.

9.2 The delivery of manufactured or mobile goods, which are to be produced, requires the written acceptance by the principal. This includes assembly services.

9.3 Furthermore, in the case of deliveries, the risk is transferred to the principal upon receipt of the delivery at the designated destination with the signing of the delivery note. The principal is to check for performance within four working days of delivery only with respect to visibly recognisable defects, and contests these without delay. Otherwise, the principal is released from the obligation to inspect and give notice of defects as prescribed by § 377 HGB (Code of Commercial Law).

10. Responsibility for Defects

10.1 The contractor assumes the responsibility for defects for the contractually prescribed and defect-free condition of the performance he is due to provide for the duration of the term of the warranty. Unless otherwise agreed, the period of observation for claims for defects amounts to 26 months from the transfer of risk, or if acceptance is required, from the acceptance of the service. The statutory period of limitation for claims for defects is extended by the period, during which the defective service cannot be used for the intended purpose.

10.2 For defects arising during the statutory period of limitation, the legal provisions apply. The contractor is committed to bear all expenses incurred by the principal in the scope of the responsibility for defects. Further legal entitlements by the principal are hereby excluded by the provision.

10.3 Claims by the principal due to defects of the expiry two years after the date of a first claim by a third party for the violation of property rights or other rights, or alternatively when the principal is notified of the existence of defects of this in an any other way. If the contractor acts maliciously, the legal provisions apply.

11. Confidentiality

11.1 Both parties are to keep all non-public information of the respective other party confidential, which become known to them due to their business relationship, and not to make use of these for their own purposes or the purposes of their parties. Further other legal nondisclosure duties remain unaffected.

11.2 Any released media, samples, drafts, drawings, etc. are to be returned to the principal upon completion of the order. Any right of retention is precluded. These are to be kept confidential, just as models, castings, and any other media. These may only be replicated upon express written permission, and may only be utilized in the performance of our orders, and neither sold to third parties, nor handed over or made available to third parties in any form.

11.3 The non-disclosure commitment remains in force after the settlement of the contract; it only expires, if the principal know how embedded by the assigned models, making, samples, data, illustrations, drawings, calculations, and other documentation has become public knowledge without violation of the legal duties by other party.

11.4 All documentation made available to the contractor by the principal remain the property of the principal, and are to be returned together with all transcripts, copies, etc., upon demand of the principal or alternatively destroyed upon the request. The copying of such objects is only permissible in the scope of operational requirements and subject to the provisions of copyright. Any right of retention is precluded in the respect.

11.5 Sub-contractors must be committed accordingly.

12. Sub-Contracts

The contracting of sub-contractors requires the written consent of the principal.

13. Invoicing / Taxation

13.1 The contractor must provide verifiable billing information. Invoices for down payments, partial payments, and final payments are to be designated as such, made out in an itemised fashion, and consecutively numbered. The invoice must contain the following information:

- Date of dispatch,
- Number of a partial delivery, if applicable,
- Due to the acceptance of the service. The statutory period of limitation for claims for defects is extended by the period, during which the service was rendered as prescribed by the contract, and is to be sent to the address for account as indicated on the order.

13.2 In the case of other services and work deliveries, which are subject to value added tax in Germany, and which are to be performed by foreign companies, the tax liability is transferred to the principal (§ 13a, Umsatzsteuergesetz [Value Added Tax Act]). The contractor may not include German value added tax in the invoices for his services. If import taxes are to be paid by the contractor.

13.3 In the case of other services and work deliveries, which are subject to value added tax in Germany, and which are to be performed by foreign companies, the tax liability is transferred to the principal (§ 13a, Umsatzsteuergesetz [Value Added Tax Act]). The contractor may not include German value added tax in the invoices for his services. If import taxes are to be paid by the contractor.

13.4 The principal is entitled, to retain any withholding tax and/ or taxes deducted at source from the gross price, and to remit these to the tax authorities, if no valid release document is present for the contractor.

14. Assignment of Receivables

The receivables of the contractor against the principal may only be ceded with expressed written consent of the purchasing department. If the business transaction constitutes a commercial transaction for both sides, § 376a HGB shall apply.

15. Offsetting

15.1 The contractor is not entitled to any right of retention, as far as these are based on countermovements from other transactions with the principal.

15.2 The contractor may only offset against claims, which were deemed to be undisputed or legally binding.


16.1 Place of fulfillment is the destination of the service as designated by the principal.

16.2 German law shall apply as applicable to domestic parties of Germany.

16.3 The contractor is fully responsible to ensure that he has observed and complied with the legal conditions with violation of property rights or other rights, or alternatively when the principal is notified of the existence of defects of this in any other way. If the contractor acts maliciously, the legal provisions apply.

16.4 Place of jurisdiction shall be the at the registered office of the principal, if the contractor is a merchant, a corporate body under public law, or a holding company under public law. The principal is nonetheless entitled to call on the relevant court of law at the registered office of the contractor.