

# General Terms and Conditions for Procurement of X-Rite Europe AG

## 1. Exclusive Application

- 1.1 These general terms and conditions for procurement (the "General Terms") shall apply to all orders placed by us.
- 1.2 Any variation from these General Terms or additional conditions, in particular general conditions of our suppliers, shall not apply unless agreed in writing by both parties.

## 2. Offer

- 2.1 Upon our request, the supplier shall submit an offer at no cost for us. The offer shall exactly match our request. The supplier shall expressly indicate if and to what extent the offer deviates from the request. The offer shall be binding for 60 days unless otherwise expressed in the offer.

## 3. Order

- 3.1 Orders shall only be valid if placed or confirmed by us in writing.
- 3.2 If the conclusion of a contract is dependent on a confirmation of the order, it shall only be binding if the confirmation does not deviate from the order.

## 4. Prices

- 4.1 Unless expressly agreed otherwise in writing, prices in this order are fixed prices, including all charges and packing, at our factory in Regensburg.
- 4.2 Any costs for transportation insurance shall only be borne by us if and to the extent agreed by us in writing in advance.

## 5. Delivery conditions

- 5.1 Delivery is due at the date agreed upon in the order. If the supplier is late, it will upon written reminder thereof be put in default.
- 5.2 If the supplier has reason to believe that delivery might not be effected at the due date, it shall immediately notify us thereof in writing, stating the reasons for such delay and the estimated duration thereof. In spite of such notification, the supplier may nonetheless be put in default by provision of above mentioned written reminder.
- 5.3 The supplier may not invoke that any documents or additional objects to be provided by us are missing, except when it had requested the same from us in due time. The respective time for delivery by the supplier shall then be adequately extended.
- 5.4 Partial deliveries are not permissible unless otherwise agreed in writing.

## 6. Packaging, Transportation, Insurance, Risk of Loss

- 6.1 The supplier is responsible for appropriate transportation, and shall arrange for shipping as specified in the purchase order.
- 6.2 Unless otherwise agreed in writing, the risk of loss shall pass on delivery at our factory. In cases of default of acceptance, or delay or impossibility of the transportation due to reasons not only on the supplier's side, the deliverables may, after written notification to us by the supplier, be stored at our expense and risk.
- 6.3 The supplier is responsible for appropriate packaging. The supplier shall expressly notify us in case a special duty of care is required in removing transportation safety devices.

## 7. Notification of Defects

- 7.1 Any notification of defects shall be made after examination of the goods delivered, which examination shall be performed as soon as reasonably practical in the ordinary conduct of business; however, there is no specific deadline.
- 7.2 The supplier shall immediately credit us for any goods returned in full. Such credit will enable us to pay for any accepted goods in due time.
- 7.3 Any replacement deliveries shall again be invoiced for.

## 8. Warranty and Liability

- 8.1 The supplier warrants that the deliverables are free from any defects reducing the value or fitness for the intended purpose, and that the deliverables shall have the warranted properties and conform to the prescribed performance criteria and specifications. Raw material and semi-finished products proving to be defective while in process shall be replaced by supplier at no cost for us without regard to the time elapsed from delivery of the goods until discovery of the defect.
- 8.2 Regarding semi-finished and finished products with a prescribed warranty period, the supplier shall at no cost for us repair or, if necessary, replace as soon as possible all parts which become defective or useless because of bad or inappropriate materials, defective construction or design.
- 8.3 The warranty issued by supplier shall extend to parts manufactured by subcontractors.
- 8.4 The warranty period shall be 12 months unless otherwise agreed in writing, starting from the delivery at our factory. In case a joint acceptance is stipulated, the warranty period starts with its successful performance. For goods which are usually not operative or activated immediately after delivery, the warranty period starts with their activation, which shall immediately be reported to the supplier in writing; in such cases however, the warranty period shall not exceed 24 months from delivery at our factory. If the delivery, joint acceptance or activation are delayed due to reasons not at the supplier's fault, the warranty period shall end 24 months after notification that the goods are ready for delivery. In such cases, the supplier shall have the right to examine the goods for storage-related damages before activation.
- 8.5 The warranty for any replaced or repaired items shall be identical to the one for the deliverables themselves. However, the supplier does not have to warrant for works effected by us and consequences caused by us in an improper or unauthorised way.

## 9. Consequences of Delay

- 9.1 If the supplier is in default regarding the delivery or warranty and the adequate time limit for subsequent performance granted by us has expired, we may withdraw from the contract or claim damages arising out of the non-performance or late performance, respectively.
- 9.2 If before the delivery is due it can be reasonably expected that the delivery will be delayed to a commercially unreasonable extent not attributable to us, we shall have the right of choice according to Section 9.1 above if the requirements for delivery are not fulfilled within a commercially reasonable time limit.
- 9.3 The right of choice according to Section 9.1. shall also be given if it can be reasonably expected during the manufacturing process that the deliverable will not be suitable without our fault and the supplier does not provide for the basis for a correct fulfilment within an adequate time limit.
- 9.4 We reserve the right to claim damages from late deliveries. In case liquidated damages have been agreed upon, they shall in their maximum amount replace any compensation for actual damages.

**10. Patent Infringement**

10.1 The supplier is liable for and warrants that the delivery and use of the goods offered does not infringe upon any patent or other third party property rights. The supplier shall however not be liable for infringement of foreign industrial property rights, if the goods are used abroad without the supplier's knowledge at the time of the order, or if any tailor-made goods are commissioned by us.

**11. Installation**

11.1 In case installation of the deliverables is also stipulated, it shall be included in the price without any further consideration unless expressly agreed otherwise in writing.

**12. Work effected in our Factory**

12.1 Any persons fulfilling tasks in the frame of purchase orders in our factory shall be subject to our operating and work rules; they shall comply with all rules applicable on our premises. No liability whatsoever is assumed for any accidents incurred by the persons working in our factory or on our premises.

**13. Drawings, Operating Rules and Instruments**

13.1 Prior to starting the manufacturing process, the supplier shall provide us with any technical drawings for confirmation. The supplier shall, despite our confirmation, remain responsible for the proper technical performance and operation. The final execution plans, operating rules, manuals and lists of spare parts for correct maintenance shall in general be handed over in four copies during the installation period.

13.2 Production instruments (instruments, forging dies, apparatuses, models, gauges, samples, drawings etc.) provided by us to the supplier or paid by us are in our property and must not be destroyed, handed over to third parties, or used for purposes other than the execution of our orders, except with our prior written consent; they must be marked as our property. Upon our first demand, the supplier must return production instruments to us or to third parties designated by us.

13.3 In case we paid part of the construction and manufacturing costs for the production instruments, they shall be our property. The supplier's obligations in Section 13.2 above also apply to such production instruments. After delivery of the production instruments to us or to a third party designated by us we are obliged to pay the supplier the outstanding price less the agreed amortisation quota.

13.4 The obligations in Sections 13.2 and 13.3 above shall apply to the time period in which the production instruments remain with the supplier, even if the supplier has no orders from us. The risk of loss, deterioration or damage of the production instruments, but not the risk of normal wear and tear, is with the supplier.

13.5 If the supplier is in breach with Sections 13.2-13.4 above, the supplier shall surrender the profits and indemnify us for any damages caused; additionally, we may withdraw any pending orders.

**14. Confidentiality, Intellectual Property**

14.1 All information and documentation, such as drawings etc., provided by us to the supplier for the manufacture of the deliverables must not be used, copied or made available to third parties for any other purposes. All copyright and other intellectual property rights, if any, shall be and remain our property. Upon request, the supplier shall immediately hand over all documents and copies thereof. In case no delivery takes place for whatever reason, the supplier shall hand over the respective information and documentation without being requested.

14.2 The supplier shall treat the order, all works related to the order and the delivery as trade secrets and, accordingly, keep the same strictly confidential.

14.3 The supplier shall be responsible to pass the above confidentiality obligation to all subcontractors.

14.4 Technical documentation of the supplier or its subcontractors will be treated by us confidentially, and shall remain the property of the supplier or its subcontractors.

**15. Permission to print**

15.1 The supplier shall submit to us proof sheets or prints in two copies, together with the original, for permission to print.

**16. Manufacturer's Name**

16.1 The supplier must not indicate the manufacturer's name on any printed matters, drafts etc. However, a control character submitted by us shall be included at a place designated for that purpose.

**17. Payment Conditions**

17.1 Unless otherwise agreed in writing, payment must be made within 30 days from receipt of the invoice, but not earlier than delivery or acceptance, respectively. We reserve the right to set-off with outstanding claims.

17.2 Payment of any invoices shall not mean that we have accepted the relevant goods, nor that we have waived any warranty rights.

**18. Advance Payments**

18.1 In case of advance payments, the supplier shall, upon request, provide adequate security (e.g. a bank guarantee).

**19. Force Majeure**

19.1 Neither party shall be held liable for non-performance due to any event of force majeure. Force majeure shall mean all circumstances arising after conclusion of the contract which are not foreseeable and beyond both parties' control.

19.2 The party invoking force majeure shall immediately notify the other party in writing and communicate the occurrence of force majeure and its estimated duration. Failure to notify the other party of force majeure circumstances deprives a party of the right to claim force majeure.

**20. Applicable Law and Jurisdiction**

20.1 This agreement shall in all respects be governed by Swiss law, to the exclusion of (i) its principles on the conflict of laws, and (ii) the UN Convention on Contracts for the International Sale of Goods (CISG 1980). Any disputes arising out of or in relation to this agreement shall be subject to the jurisdiction of the ordinary courts of the canton of Zurich.