

General Conditions of Purchase and Order

General Conditions of Purchase and Order ("Purchase Conditions") of JOYNEXT Sp. z.o.o. (in the following "Purchaser") for use vis-à-vis enterprises (in the following "Vendor")

1. Applicable Terms

1.1 The legal relationship between the Purchaser and the Vendor shall be governed exclusively by these Purchase Conditions, provided however, that the Parties may agree on additional or deviating terms in writing.
1.2 Purchaser expressly objects to conflicting terms. Acceptance without reservation of goods or other services (in the following together "goods" or "delivered goods") as well as any payment made without express objection by the Purchaser shall not be construed as consent to deviating or conflicting terms.
1.3 These Purchase Conditions shall also apply to all future legal relationships between the Purchaser and the Vendor.

2. Purchase Contract

2.1 All purchase contracts (orders and acceptances), call-offs of deliveries and all other declarations in connection with the respective delivery shall be made in writing. Call-offs of deliveries can also be made in text form (inter alia facsimile, email).
2.2 If the Vendor does not accept an order within one week of receipt thereof, the Purchaser may revoke his order. Call-offs of deliveries shall be confirmed without undue delay and shall be binding at the latest after the Vendor has not objected to them within one week of receipt.
2.3 In so far as this is reasonable for the Vendor, Purchaser may demand changes to the goods with regard to construction and design. In this case the consequences, in particular any increase and decrease of costs as well as delivery dates, shall be agreed upon in a reasonable manner.
2.4 The Vendor may use subcontractors for the entire or material parts of the production only with the express prior written consent of the Purchaser.
2.5 Insofar as the parties agree upon delivery schedules and/or quantity frameworks for the future, the Purchaser shall only be obliged to purchase the quantities scheduled for the respective following calendar month. This purchase obligation shall be fulfilled through orders according to Sec. 2.1. The Vendor may make arrangements for stocks/materials resulting from the delivery schedules and/or the quantity frameworks for a maximum of two further months. The Vendor shall automatically take into account changes to the delivery schedules and/or quantity frameworks in production plans and arrangements for stocks/materials.

3. Prices, payments, assignment

3.1 The prices agreed upon are fixed prices and include all incidental services, unless expressly otherwise provided in writing.
3.2 Unless otherwise expressly provided in writing, all prices shall be "DDP" (Incoterms 2010) to the Purchaser's designated plant or the agreed destination, packaging included. VAT is not included. Should packaging be not included in the price for once, Purchaser shall not be obliged to pay remuneration for it; Vendor may ask for return of empties at his own expense.
3.3 Invoices shall be executed in two copies and shall include the order number, Vendor number and Purchaser's article number.
3.4 Unless otherwise expressly agreed in writing, payment shall be made upon receipt of satisfactory delivery as well as receipt of the invoice, at the Purchaser's discretion, either within 14 days less 3% discount or within 90 days without any deductions.
3.5 The assignment of Vendor's payment claims and their collection through third parties requires the prior written consent of the Purchaser which may not be unreasonably withheld.

4. Delivery

4.1 Unless expressly otherwise agreed in writing, deliveries shall be made "DDP" (Incoterms 2010), i. e. the passing of risk occurs upon handover at Purchaser's designated plant or the agreed destination.
4.2 Partial delivery requires the prior written consent of Purchaser.
4.3 The notice of delivery shall include the description of the article, the article number as well as the Purchaser's purchase order number.

5. Delivery terms

5.1 Delivery times and dates agreed upon are binding. The receipt of the goods at the Purchaser's plant or the agreed destination shall be relevant with regard to the compliance with delivery times and dates.
5.2 If the Parties did not agree on "DDP" for deliveries, the Vendor shall prepare the goods for delivery in time taking into account the usual times for loading and shipping.
5.3 The Vendor shall inform the Purchaser without undue delay in writing in case circumstances occur or become apparent due to which the agreed delivery dates and times cannot be met.

6. Delay of delivery, force majeure

6.1 The Purchaser is entitled to a penalty in the amount of 1 % of the delivery value per week commenced in which Vendor is in delay with the delivery, provided that the maximum penalty shall amount to 5 % of the delivery value. Purchaser may demand payment of the penalty along with delivery. Any statutory claims the Purchaser is entitled to due to the delay of delivery remain unaffected. A penalty payment will be offset against a payment for damages, if applicable. Acceptance of delayed deliveries without reservation shall not be deemed a waiver of such claims. The claim for a penalty is reserved until the time of final payment.
6.2 Unforeseeable, unavoidable and grave events ("force majeure") exempt the Parties from their obligations for the duration of the event. This shall also apply if the event occurs at a time in which the respective Party was in delay with obligations. The Parties shall inform one another of events of force majeure as far as reasonable without undue delay and will adjust their respective obligations to the changed circumstances in good faith.

7. Defects as to quality and defects in title, violation of third Party rights, statute of limitations

7.1 The statutory provisions on defects as to quality and defects in title shall apply, unless expressly provided otherwise in the following.
7.2 The Purchaser's duty comprises only the inspection and, if applicable, objection of goods for type and quantity as stated in the delivery notice and of any externally visible damage that may have occurred during transport. The Purchaser shall notify the Vendor of further defects of delivered goods without undue delay in writing as soon as the defects have been detected in the course of ordinary business. Insofar, the Vendor waives the objection of belated notification of defects.
7.3 If a defect becomes apparent within six months of passing of the risk, it will be rebutably assumed that the defect already existed at the time of passing of the risk, unless such an assumption is incompatible with the nature of either the object of delivery or the defect.
7.4 The Purchaser may determine the form of subsequent performance ("cure") at his free discretion; the Vendor may refuse subsequent performance subject to the conditions set forth in article 561 § 3 of Civil Code.
7.5 The Purchaser may remedy a defect himself or through a third party at the Vendor's cost after a reasonable time period set for the Vendor to provide subsequent performance has expired without success, unless the Vendor is entitled to refuse subsequent performance. In case of substantial urgency where it is impossible to inform the Vendor of the defect and of the impending grave damage, and to set even a short time period for subsequent performance, setting a time period for subsequent performance is not necessary.
7.6 The Purchaser may claim a handling fee in the amount of EUR 100 for each warranty case. Purchaser may furthermore claim fixed charges per hour for other operating expenses. The Vendor may prove that the Purchaser's actual costs of handling the warranty case are lower. Further claims of Purchaser for damages remain unaffected.
7.7 The Vendor shall be liable for claims due to the violation of third party rights including filings for industrial and intellectual property rights (in the following together "third party rights") resulting from the contractual use of the delivered goods.
7.8 The Vendor shall indemnify the Purchaser and the Purchaser's customers against all claims resulting from the violation of third party rights. The Vendor is aware that the Purchaser's products are used worldwide.
7.9 The Vendor shall not be liable insofar as he has produced the delivered goods according to drawings, models or other descriptions or specifications provided by the Purchaser and neither knew nor should have known that third party rights are violated thereby. Insofar as the Vendor is not liable, the Purchaser shall indemnify him against third party claims.
7.10 The Parties shall inform one another of third party rights violations, corresponding risks and alleged violations as soon as they become known to the Parties and shall provide one another with the opportunity to defend against third party claims amicably.

7.11 The statute of limitations for defects as to quality and defects of title is 24 months after passing of risk between the Purchaser and his customers, however no later than 36 months after passing of risk between the Vendor and the Purchaser. For the US, Canada and Puerto Rico, the warranty period is 48 months or 60,000 miles (US), depending on which case occurs first, from the initial vehicle registration date or replacement part installation, and ends, however, 54 months from the date on which the Vendor delivers the products to the Purchaser at the latest.

8. Liability, Insurance

8.1 Unless otherwise provided in these terms, the Vendor is liable vis-à-vis the Purchaser according to the statutory provisions. Insofar as the Vendor is liable vis-à-vis the Purchaser, he shall also be obliged to indemnify the Purchaser against all third Party claims.
8.2 Subject to the statutory requirements, including Book Three, Title VI¹ of Civil Code, the Vendor shall also be obliged to reimburse the Purchaser for costs and expenses resulting from necessary measures to avert dangers, in particular recall measures. Insofar as possible and reasonable, the Purchaser shall inform the Vendor of the contents and scope of recall measures and shall grant him the opportunity to comment on these measures.
8.3 The Vendor is obliged to enter into a reasonable product liability insurance including coverage for product financial losses as well as recall costs with an insurer licensed within the European Union. Vendor may insure recall costs in a separate insurance contract. Proof of such insurance shall be provided to the Purchaser upon request. Any further claims of the Purchaser remain unaffected.

9. Retention of title

Retention of title by the Vendor requires express agreement in writing in order to be valid. However, this does not apply to simple retention of title by which the Vendor retains title in the delivered goods until full payment of the delivery but permits further processing and sale within the course of ordinary business.

10. Supplies of the purchaser

10.1 Supplies provided by the Purchaser to Vendor for purpose of fulfilment of the contract ("Supplies") remain in the Purchaser's ownership and may only be used as contractually agreed.
10.2 Processing or transforming of the Supplies by the Vendor are carried out on behalf of the Purchaser. If the Supplies are processed together with other items which do not belong to the Purchaser, the Purchaser shall acquire joint title to the new item corresponding to the value of the Supplies compared to the other processed items at the point of time of processing.
10.3 If the Supplies are irrevocably mixed with other items not belonging to the Purchaser, the Purchaser shall acquire joint title to the new item according to the value of the Supplies compared to the other mixed items at the point of time of mixing. Should mixing occur in a manner that the items provided by the Vendor are to be regarded as the dominant item, it shall be deemed agreed that the Vendor shall transfer joint title to the Purchaser in the respective ratio; the Vendor shall keep sole or joint ownership in custody for the Purchaser.

11. Production tools

11.1 Purchaser remains the owner of Supplies such as models, matrices, molding tools, patterns, tools or other goods (in the following "Production Tools"). The Parties agree that Production Tools, which the Vendor purchases or manufactures to fulfil the delivery contract at the Purchaser's costs, pass into the ownership of the Purchaser. The Production Tools shall be marked clearly "owned by JOYNEXT Sp. z.o.o.". Intellectual and industrial property rights in the Production Tools shall belong to the Purchaser. The Vendor shall use the Production Tools exclusively for the fulfilment of delivery contracts and shall handle them with the due care of a prudent business man, in particular the Vendor shall insure Production Tools at his own cost against damages by fire, water, and theft, and shall carry out maintenance and inspection in due time at his own cost.
11.2 At any time, upon Purchaser's request for which he needs no reasoning, Production Tools shall be returned to the Purchaser without undue delay. The Vendor's right of retention due to outstanding payments for Production Tools purchased or manufactured shall remain unaffected.
11.3 Production Tools which remain with the Vendor after delivery of the last goods produced therewith may only be destroyed after prior written consent by the Purchaser. The Vendor may demand that the Purchaser takes back the remaining Production Tools.

12. Export Control

12.1 The Vendor undertakes, vis-à-vis the Purchaser, to adhere to all Polish as well as all applicable European and US-American export control regulations.
12.2 Furthermore, the Vendor undertakes to note, without prior request, export approval requirements according to Polish, European and US-American law, if any, for the respective goods in his offers and bills. Such notes shall include, in particular but not limited to the respective ECCN-number according to the US Export Administration Regulations if US goods are concerned.
12.3 The Vendor hereby indemnifies the Purchaser internally against all damages which the Purchaser may suffer due to the Vendor's violation of the foregoing obligations.

13. Security of the International Supply Chain

13.1 The Vendor declares that he is certified as an Authorized Economic Operator and shall prove this through noting the AEO Certificate Number.
13.2 Insofar as the Vendor is not an Authorized Economic Operator he undertakes to ensure the requirements listed in the Security Declaration are adhered to lastingly in his plants and he shall immediately send a validly signed Security Declaration to the Purchaser. In the event that the Vendor is not able to fulfil the requirements listed in the Security Declaration he is obliged to notify the Purchaser hereof immediately in writing.
13.3 The current version of the Security Declaration can be downloaded from the following website of the European Union:
http://ec.europa.eu/taxation_customs/resources/documents/customs/policy_issues/customs_security/aeo_security_declaration_en.pdf.

14. Confidentiality

14.1 The Parties will maintain strict confidentiality for all non-evident operational and technical information disclosed or otherwise obtained due to the business relationship, and will treat such information as business and trade secrets. The Vendor shall impose corresponding confidentiality obligations on third parties who need to obtain knowledge or access to such business and trade secrets (i. e. employees, subcontractors).
14.2 Production Tools, drawings, outlines, construction data and similar objects may not be provided or otherwise made accessible to unauthorised third parties; they may only be provided to subcontractors after agreement on corresponding confidentiality obligations. Copying such objects is only permitted within the scope of operational requirements and copyright law.
14.3 The Parties may only advertise their relationship to the respective other Party after prior written consent of the other Party.

15. Declaration of Compliance

15.1 The Vendor warrants the compliance with following principles:
- adherence to human rights,
- prohibition of child and enforced labor,
- observance of applicable laws about the protection of personnel, data, environment and occupational safety,
- prevention of corruption,
- observance of applicable laws.
15.2 The Vendor shall impose corresponding warranties of compliance on his subcontractors.

16. Final provisions

16.1 The relationship between the Parties shall be governed exclusively by the laws of the Republic of Poland excluding the UN Convention on the International Sale of Goods (CISG). The Incoterms 2010 shall govern the interpretation of delivery clauses.
16.2 The place of fulfilment for deliveries is Purchaser's designated plant or the agreed destination. In all other regards the place of fulfilment shall be Siemianice, Poland.
16.3 The venue for all legal disputes shall be Siemianice, Poland. The Purchaser shall also be entitled to file claims at the Vendor's legal venue.