



# General Terms and Conditions of Purchase

## § 1 Preliminary Remarks

(1) The General Terms and Conditions of Purchase of the Polar Kältetechnik GmbH (hereinafter referred to as: Polar) shall apply exclusively; terms and conditions of the Supplier that conflict with or deviate from these General Terms and Conditions of Purchase shall not be recognised unless express written consent has been given to their validity. These General Terms and Conditions of Purchase shall also apply if the delivery is accepted without reservation or payments are made in the knowledge that the terms and conditions of the Supplier may conflict with or deviate from the General Terms and Conditions of Purchase set out here. These General Terms and Conditions of Purchase shall apply to all present and future orders for deliveries and other services.

(2) All agreements made between Polar and the Supplier for the purpose of the execution of this contract are set out in writing in this contract. Orders placed orally or by telephone require subsequent confirmation in writing by Polar to avoid a prima facie case of acquiescence and to be legally valid. Orders, delivery call-offs as well as changes and additions thereto may also be made electronically or by remote data transmission or by machine-readable data carriers.

(3) These General Terms and Conditions of Purchase shall only apply to entrepreneurs pursuant to Section 310 (1) of the German Civil Code (BGB).

(4) The contractual language is German. The German version of these Terms and Conditions of Purchase shall prevail. The English version is for information purposes only.

## § 2 Conclusion of Contract

(1) The Supplier is obliged to accept the order within a period of two weeks by complying with the written form (order confirmation). Confirmations received later or deviating from the order are considered a new offer and require written acceptance by Polar for conclusion of a contract. Changes or additions to the order after conclusion of the contract are only effective if confirmed in writing.

(2) Polar reserves the property rights and copyrights to moulds, samples, models, profiles, drawings, standard sheets, printing templates, gauges, illustrations, calculations, and other documents; these may not be made accessible to third parties without the express written consent of Polar. They are to be used exclusively for production on the basis of this order; after completion of the order they are to be returned unsolicited. They shall be kept secret from third parties; in this respect, the provisions of § 9 shall additionally apply.

(3) The transfer of orders to third parties is not permitted without the written consent of Polar and entitles Polar to withdraw from the contract in whole or in part and to claim damages.

## § 3 Prices - Terms of Payment

(1) The price stated in the order is binding. Unless agreed otherwise in writing, the price includes delivery „free domicile“ to the specified shipping address or place of use, including packaging and transport. The mode of transport can be specified unilaterally by Polar in the order. In the case of pricing “ex works” or “ex sales warehouse” of the Supplier, shipment is to be made at the lowest costs in each case, insofar as Polar has not prescribed a specific mode of transport. Any additional costs resulting from non-compliance with the shipping instructions shall be borne by the Supplier. Where the pricing is quoted as free to the recipient, Polar can also determine the mode of transport. Any additional costs incurred to meet a delivery deadline, such as deriving from accelerated transport, shall be borne by the Supplier.

(2) The statutory value added tax is included in the price.

(3) Invoices are only processed if they indicate - in accordance with the specifications in the order - the complete order reference as well as the numbers of each individual item; the Supplier shall be responsible for all consequences arising from non-compliance with this obligation, unless he proves that he is not responsible for them.

(4) Unless agreed otherwise in writing, the purchase price shall be due for payment within 14 days with a 2% discount or within 30 days without a discount, in each case calculated from the date of complete delivery, any agreed certification of material tests and proper receipt of the invoice. Discount deduction shall also be permissible if the purchaser offsets or withholds payments in an appropriate amount because of defects; the payment period shall commence after the defects have been fully remedied.

(5) Polar is entitled to rights of set-off and retention to the extent provided by law.

(6) The assignment of claims against Polar is only permissible with the written consent of Polar.

(7) The fulfillment of the contract on the part of Polar is subject to the condition that there are no obstacles to fulfillment due to national or international regulations of foreign trade law and no embargoes and / or other sanctions.



# General Terms and Conditions of Purchase

## § 4 Delivery and Performance Time

(1) The delivery time stated in the order is binding. The timeliness of deliveries or supplementary performance is determined by the date of receipt at the place of receipt as specified by Polar; the timeliness of deliveries with installation or assembly as well as of services is determined by their formal acceptance. Insofar as the Supplier has to provide material tests, test protocols, quality documents or other documents, the completeness of the delivery and service presupposes the timely receipt of these documents.

(2) In the event of a recognisable delay in a delivery or service or subsequent performance, Polar must be notified immediately and a decision must be obtained.

(3) If the Supplier is in default, Polar is entitled to charge a contractual penalty of 0.5 % for each commenced working day of delay, but not more than 10 % of the total contract sum. Further legal claims (withdrawal and damages instead of performance) remain reserved. The Supplier shall be entitled to prove to the purchaser that he is not responsible for the breach of duty. The Supplier may only invoke the absence of necessary documents to be supplied by Polar if he has sent a written reminder for the documents and has not received them within a reasonable period of time.

(4) If the corresponding reservation is not made when accepting the deliveries, services or subsequent performance, the contractual penalty may nevertheless be claimed up to the final payment.

(5) If the Supplier ceases to perform, or a provisional insolvency administrator is appointed, or insolvency proceedings are opened against the assets of the Supplier, Polar shall be entitled to withdraw from the contract, in whole or in part, or to terminate the contract. In this case Polar can, against appropriate remuneration, make use of the facilities available for the continuation of the work or of deliveries and services made by the Supplier up to that point in time.

(6) Cases of force majeure (unforeseen circumstances and events for which no one is responsible and which could not have been avoided even with the diligence of a prudent businessman, such as war, threat of war, riot, a pandemic, use of force by third parties against persons and property, sovereign interventions, industrial disputes, fire, interruptions of the intended transport connections as well as shortage of raw materials and energy), which make standard receipt and acceptance impossible, entitle Polar to postpone receipt and acceptance accordingly and exclude default of acceptance. If the hindrance lasts longer than three months, the Supplier is entitled, after setting a reasonable grace period, to withdraw from the contract with regard to the part not yet fulfilled.

## § 5 Transfer of Risk - Documents

(1) Unless agreed otherwise in writing, delivery shall be made free of charge to the specified shipping address or place of use. In the case of deliveries with installation or assembly and in the case of services, the risk shall transfer upon acceptance; in the case of deliveries without installation or assembly, the risk shall transfer upon receipt at the place of receipt as specified by Polar.

(2) Each delivery shall be accompanied by delivery notes containing detailed information regarding the contents as well as a complete order reference. As long as this information is missing or incomplete, the goods are stored by Polar at the expense and risk of the Supplier and the resulting delays in processing are not the responsibility of Polar.

(3) Upon delivery the Supplier is obliged to hand over the respective safety data sheets applicable to the delivery. The Supplier indemnifies Polar against all recourse claims made by third parties in the event that the Supplier culpably fails to deliver the safety data sheets, or delivers them late or with mistakes.

(4) The Supplier must provide Polar, no later than two weeks after placement of the order and promptly in the case of any changes thereto, with all information and data in writing as required by Polar to comply with the requirements of foreign trade law for export, import and re-export, in particular:

- (a) all applicable export list numbers, including the Export Control Classification Number under the U.S. Commerce Control List (ECCN);
- (b) the statistical commodity code according to the current commodity classification of foreign trade statistics and the HS (Harmonised System) code; and
- (c) country of origin (non-preferential origin) and, as far as requested by Polar, supplier declarations on preferential origin (for European suppliers) or certificates on preference (for non-European suppliers).

(5) If the Supplier violates his obligations according to § 5 (4), he shall bear all expenses and damages that Polar is charged as a result of this, providing the Supplier is not responsible for the violation of the obligation.

## § 6 Defect Inspection – Liability for Defects

(1) The Supplier guarantees, in addition to the factual and legal defect-free delivery, that all deliveries and services comply with the latest state of the art, the relevant legal European and German provisions as well as the regulations and guidelines of authorities, professional



# General Terms and Conditions of Purchase

associations and trade associations.

(2) Polar is obliged to check within a reasonable period of time whether the delivered goods correspond to the ordered quantity and type, whether there are any externally recognisable transport damages or externally recognisable defects; the complaint is in time if it is received by the Supplier within a period of five working days, calculated from complete delivery or, in the case of hidden defects, from discovery. Polar shall have no further obligations towards the Supplier other than the aforementioned obligations of inspection and notification.

(3) Polar is entitled to the statutory claims for defects in full; under any circumstances Polar is entitled, before or at the time of the passing of risk and during the limitation period set out in paragraphs 5 and 6 below, to demand from the Supplier, at his option, either the removal of the defect or the delivery of a new item. This also applies to deliveries for which the inspection was limited to random samples. The right to claim damages, in particular damages in lieu of performance or reduction, is expressly reserved. In addition to the statutory warranty rights, Polar is additionally entitled to withdraw from the contract in whole or in part without compensation in the event of non-performance or failed subsequent performance.

(4) Rework can be carried out without setting a deadline at the expense of the Supplier if delivery is made after the original deadline. The same applies if Polar has a special interest in immediate supplementary performance due to the avoidance of its own delay or other urgency and a request to the Supplier to remedy the defect within a reasonable period is not tolerable for Polar. If the Supplier is in default with the subsequent performance, Polar is entitled to remedy the defect itself at the Supplier's expense.

(5) The limitation period is 36 months, calculated from the transfer of risk (§ 5 (1) above), unless the mandatory provisions of §§ 478, 479 of the German Civil Code (BGB) intervene or a longer limitation period is granted by law. In the case of deliveries to places where Polar carries out orders outside its works or workshops, it begins with the acceptance by Polar's customer, at the latest one year after the transfer of risk. Insofar as the Supplier – within the scope of his obligation to rectify a defect – reworks an item or makes a new delivery, the limitation period shall start to run again from the beginning.

(6) For delivery parts which could not remain in operation during the investigation of a defect and/or the rectification of a defect, the limitation period shall be extended by the time of the interruption of operation. In the event of necessary rework, the Supplier shall be obliged, upon request, to carry out the rectification work outside working hours without being able to demand special compensation for this.

(7) The Supplier shall bear the costs and risk of returning defective delivery items.

(8) In the case of a sale of consumer goods, the provisions of §§ 478, 479 of the German Civil Code (BGB) remain unaffected.

## **§ 7 Product Liability - Indemnification - Liability Insurance Cover**

(1) As far as the Supplier is responsible for a product damage, he is obliged to indemnify Polar insofar from claims for damages of third parties on first demand as the cause is set in his sphere of control and organisation and he is liable himself in the external relationship. The Supplier shall mark all delivered items in such a way that they are permanently recognisable as his products.

(2) Within the scope of its own liability for cases of damage in the sense of paragraph (1) above, the Supplier is also obliged to reimburse Polar for any expenses according to §§ 683, 670 of the German Civil Code (BGB) or according to §§ 830, 840, 426 of the German Civil Code (BGB), which result from or in connection with a recall action lawfully carried out by Polar. The Supplier shall be informed in good time in advance – as far as this is possible and reasonable – of the content and scope of such a recall measure and given the opportunity to comment.

(3) The Supplier undertakes to maintain a product liability insurance, which also includes the costs of a possible recall action, with an insured sum of EUR 10 million per personal injury/property damage - lump sum; in case where Polar is entitled to further claims for damages, these shall remain unaffected.

(4) The Supplier shall carry out a quality assurance which is suitable in terms of type and scope and corresponds to the latest state of the art and shall provide evidence of this upon request.

(5) The Supplier is obliged to properly dispose of all waste materials, e.g. packaging, chemicals, etc., at his own expense or to recycle/reuse them and to provide corresponding proof of this. In the event of culpable violations of this obligation, the Supplier shall indemnify Polar against all claims and legal disadvantages in the event that a claim is made against Polar.

## **§ 8 Rights of Use and Protection**

(1) The Supplier grants Polar the non-exclusive, transferable, worldwide and perpetual right

(a) to use the supplies and services, to integrate them into other products and to distribute them worldwide,

(b) to use or allow the use of software and the associated documentation (together hereinafter referred to as: Software) in connection with the installation, commissioning, testing and operation of the Software;



# General Terms and Conditions of Purchase

(c) to sub-license the right of use pursuant to § 8 (1b) above to affiliated companies within the meaning of § 15 of the German Stock Corporation Act (AktG), other distributors and to end customers;

(d) to license affiliated companies within the meaning of § 15 of the German Stock Corporation Act (AktG) and other distributors the right to grant end customers the right of use pursuant to § 8 (1b) above;

(e) to use and copy the Software for integration into other products or to have it used and copied by affiliated companies within the meaning of § 15 of the German Stock Corporation Act (AktG) or other distributors;

(f) to distribute, sell, rent, lease, make available for download or make publicly accessible the Software, e.g. by way of Application Service Providing or other types of use, and to copy the Software to the extent necessary for this purpose, provided that the number of licences used simultaneously in each case does not exceed the number of licences purchased;

(g) to sub-license the right of use pursuant to § 8 (1f) above to affiliated companies within the meaning of § 15 of the German Stock Corporation Act (AktG) and other distributors.

(2) Polar, affiliated companies within the meaning of § 15 of the German Stock Corporation Act (AktG) and other distributors are authorised, in addition to the right granted in paragraph 1 above, to allow end customers to transfer the Software licences.

(3) Any sub-licences granted by Polar must provide adequate protection for the Supplier's intellectual property in the Software by using the same contractual provisions that Polar uses to protect its own intellectual property.

(4) The Supplier is obliged to inform Polar in due time, at the latest with the order confirmation, whether his deliveries and services contain „Open Source Software“. „Open Source Software“ within the meaning of this regulation is software the distribution of which to third parties is in principle free of licence fees and which may be edited by any user and/or must be disclosed to licensees or third parties in source code form.

(5) Where the Supplier's deliveries and services contain Open Source Software, the Supplier shall provide Polar with the following at the latest upon order confirmation:

(a) The source code of the Open Source Software used, insofar as the applicable open source licence conditions require the disclosure of this source code.

(b) A listing of all open source files used with a reference to the applicable licence in each case and a copy of the full licence text.

(c) A written declaration that through the intended use of Open Source Software neither the deliveries and services of the Supplier nor the products of the purchaser are subject to a „copyleft effect“, whereby „copyleft effect“ within the meaning of this provision means that the open source licence conditions require that certain deliveries and services of the Supplier as well as works derived from these may only be further distributed under the conditions of the open source licence conditions, e.g. with disclosure of the source code.

(d) If the Supplier indicates only after receipt of the order that his deliveries and services contain Open Source Software, then Polar is entitled to revoke the order within 14 days after receipt of the notification and the transmission of all information listed above.

(6) The Supplier assures and warrants that no obligatory, material, immaterial or other rights of third parties within the Federal Republic of Germany or within the countries in which the products are or have been manufactured are infringed in connection with their delivery. Polar is not obliged to check whether such rights of third parties exist in the goods or whether such rights are infringed, but is entitled to assume that the Supplier is entitled to all those rights which are necessary for the proper fulfilment of the order vis-à-vis third parties. The Supplier shall indemnify Polar in full against any claims of third parties in this respect and shall keep Polar free from complaint and damage.

(7) Polar is also entitled to obtain the necessary permission from the holder of the right at the expense of the Supplier, if and to the extent that this is not procured by the Supplier within a reasonable period set by Polar. Should it not be possible to acquire such permission, the Supplier shall ensure that the new delivery of an equivalent purchased item or the conversion of the parts concerned no longer impairs the property right.

(8) Without prejudice to further rights, Polar is entitled in such a case to withdraw from the contract or to refuse acceptance of the goods until the asserted claims have been clarified, to make goods already accepted available to the Supplier again at the Supplier's expense and to withhold payment of the entire purchase price.

(9) The Supplier's indemnity obligation relates to all expenses necessarily incurred by Polar from or in connection with the claim by a third party, including the costs of legal advice and representation.

(10) The limitation period is 36 months, calculated from the transfer of risk.

## **§ 9 Retention of Title - Provision - Tools - Confidentiality - Code of Conduct**

(1) In case where Polar provides parts or materials to the Supplier, Polar retains the title thereto. The materials provided shall be stored, designated and managed separately by the Supplier, free of charge. In the event of culpable reduction in value or loss, the Supplier shall provide compensation, whereby the Supplier shall also be responsible for simple negligence. This also applies to the invoiced transfer of order-related material.



# General Terms and Conditions of Purchase

(2) Processing or transformation by the Supplier is carried out exclusively for Polar. Polar instantly becomes the owner of the new or transformed item.

(3) Polar retains ownership of tools; the Supplier is further obliged to use the tools exclusively for the production of the goods ordered by Polar. The Supplier is obliged to insure the tools belonging to Polar at replacement value against fire, water and theft damage at his own expense. At the same time, the Supplier already now assigns all claims for compensation from this insurance to Polar; Polar hereby accepts the assignment. The Supplier is obliged to carry out any necessary maintenance and inspection work on the tools of Polar as well as all servicing and repair work at his own expense and in due time. Any malfunctions shall be reported immediately; if he culpably fails to do so, claims for damages shall remain unaffected.

(4) As far as the security interests to which Polar is entitled according to para. (1) and/or para. (2) exceed the purchase price of all not yet paid goods subject to retention of title by more than 10%, Polar is obliged to release the security interests at its own choice upon request of the Supplier.

(5) The Supplier is obliged to keep all moulds, samples, models, profiles, drawings, standard sheets, printing templates, gauges, illustrations, calculations and other documents and information strictly confidential. They may only be disclosed to third parties with the express consent of Polar. The confidentiality obligation shall also apply after the execution of this contract. However, it shall expire if and to the extent that the manufacturing knowledge contained in the moulds, samples, models, profiles, drawings, standard sheets, printing templates, gauges, illustrations, calculations and other documents provided has become generally known or was demonstrably already known to the Supplier at the time of notification within the meaning of the previous sentence.

(6) The Supplier shall comply with the laws of the applicable jurisdiction(s). In particular, he will not participate actively or passively, directly or indirectly, in any form of bribery, violation of the fundamental rights of his employees, or child labour. He will also take responsibility for the health and safety of his employees in the workplace, observe environmental protection laws and, to the best of his ability, promote and demand compliance with this Code of Conduct from its sub-suppliers.

(7) If the Supplier culpably violates these obligations, Polar is entitled to withdraw from the contract or to terminate the contract without prejudice to further claims. If it is possible to eliminate the breach of duty, this right may only be exercised after the fruitless expiry of a reasonable period of time for eliminating the breach of duty.

## **§ 10 Place of Jurisdiction – Place of Performance**

(1) If the Supplier is a businessman, the place of jurisdiction is the registered office of Polar; however, Polar is also entitled to sue the Purchaser at his registered office.

(2) The law of the Federal Republic of Germany shall apply. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

(3) Unless stated otherwise in the order confirmation, the place of performance is the registered office of Polar.