



General Purchasing and Contract Conditions

agreed between

S. SPITZ GmbH, Gmundner Straße 27, 4800 Attnang-Puchheim

- hereinafter referred to as **Spitz** -

- and

- hereinafter referred to as **the Supplier** -

1. Validity of these General Terms and Conditions

Contracts from Spitz to the Supplier are subsidiary to any other written agreements and based exclusively on the General Purchasing and Contract Conditions. In the absence of any other written agreement, these General Purchasing and Contract Conditions shall apply exclusively. The validity of any General Terms and Conditions and of other contract forms of the Supplier is expressly excluded.

2. Delivery and Payment

- a. The Supplier acknowledges that Spitz has a special interest in the accurate and timely receipt of goods, and therefore insists on full compliance with order quantities and delivery dates.
- b. Once the order has been transmitted respectively the call off has been sent by Spitz to the supplier, the latter checks immediately whether he can perform the order on the requested delivery date respectively within the requested period of time both completely and on time. Should he be unable to do this, then he must disagree with Spitz within 24 hours (interrupted by Saturdays, Sundays and Austrian national holidays) after receiving the order and shall then inform Spitz of a possible delivery date. If the suggested delivery date or suggested quantity are accepted by Spitz, then the remaining provisions from the order or call-off order from Spitz continue to apply.
- c. Should the Supplier not disagree with an order on time or not at all, the goods order becomes automatically binding with regard to the ordered items, quantities and delivery dates. If, despite this, the Supplier does not then supply the goods, or does not supply them in full, on the agreed delivery date, then he is in default in delivery. In the event of a default in delivery, the Supplier shall be strictly liable for all Spitz direct and indirect damages (including lost profits) regardless of fault. In the event of a default (even partial) in delivery, the Supplier agrees to pay Spitz a contractual penalty regardless of fault in the amount of 2% of the total amount of the order per commenced calendar day. In case of a default in delivery Spitz is entitled to invoice the Supplier with a contractual penalty in an amount determined by Spitz and to offset (at the discretion of Spitz) this against accounts receivable from the Supplier or to demand payment of these.
- d. The right of Spitz to demand compensation for default in delivery beyond the scope of the contractual penalty (also with respect to partial delivery) or for any other reason from the Supplier, remains unaffected. Likewise in the case of a default in delivery Spitz is entitled - without prejudice to further rights, in particular any compensation claims - to withdraw, without further notice from the contract. This is valid regardless of whether the Supplier is responsible for the default in the delivery or not.
- e. Payments will be made, unless otherwise agreed, within 30 days with a 5% discount or within 90 days net after receipt of the goods at Spitz. If the invoice is received after the goods, then the day of invoice receipt shall be considered the date used in the calculation of the discount period instead of the day of receipt of the goods. A discount is also allowed if Spitz offsets.

3. Warranty, Guarantee Assurances and Compensation

- a. Detailed information about the nature and quality of the goods, or on certain frame conditions of the contract are to be determined in the relevant specification which is agreed in writing with Spitz. For general information about the manner of goods delivery, consult the current version of the Spitz Logistics Handbook which must be observed in full by the Supplier. With regard to the quality of the delivered goods, the Supplier guarantees that the goods meet the agreed contractual quality, and in particular possess the properties indicated in the order or contract, and are suitable for the contractually stipulated purpose or for other purposes known to the Supplier. The Supplier also guarantees that the composition, quality and packaging, and where appropriate their declaration and specification, correspond with the applicable Austrian and EU regulations. In particular, the Supplier guarantees that the goods comply with the relevant Austrian and EU standards with regard to harmful-substances and maximum residue limits, including the pertinent ancillary laws and regulations, and of all other regulations enacted in this context, in particular those which serve consumer safety regulations.
- b. In addition, the Supplier guarantees that the goods are free from third party rights, in particular that the goods are not subject to third party property rights or to domestic or foreign industrial property rights or other rights. In the event that such third parties claims are asserted against Spitz, the Supplier is obliged to immediately clarify the entitlement of the asserted claims and has, in this respect, to indemnify and hold Spitz completely harmless. Without prejudice to any other rights of Spitz, Spitz is entitled to refuse to accept goods, to return already accepted goods to the Supplier at their cost, and to withhold or recover payment of the purchase price until the entitlement of the claims is resolved.
- c. If goods do not meet the afore-mentioned guarantees, Spitz is entitled to withdraw from the order without granting a further notice period. In addition, Spitz has the right to demand compensation. This applies regardless of whether the Supplier is responsible for non-compliance with guarantees. The same right applies to Spitz if, instead of the agreed quantities, only partial quantities are delivered, or only parts of the delivery are deficient. The applicability of §377 of the Austrian Commercial Code (UGB) is explicitly excluded.
- d. The Supplier is liable to Spitz regardless of fault, for damages arising from any defective delivery of goods or any other violation by the Supplier against a contractual or legal obligation, including the cost of product recall, loss of profit, defence costs and the cost of replacement for any damage to image. Damage to image is assumed to be 20% of the remaining damage to Spitz resulting from a defective delivery unless Spitz provides evidence of higher damages.
- e. In addition, Spitz is entitled to all rights of the purchaser under the warranty, in particular, § 932 et seq according to the Austrian General Civil Code (ABGB).



- f. Spitz shall be liable to the Supplier for any possible damages under the statutory provisions, whereby a liability for slight negligence (except for personal injuries) is excluded.

4. Inspection Rights

Spitz, or appointed third parties, are entitled to carry out inspections for compliance with contractual provisions at the supplier itself during regular operating hours at the production sites for the production of goods destined for Spitz. The Supplier further agrees to the implementation of Supplier audits by experts mandated by Spitz. The subject of Supplier audits extends to all circumstances relevant to the supply relationship. The costs incurred for Supplier audits shall be borne by the Supplier. If the Supplier becomes aware of circumstances which cast doubt on the marketability, he is obliged to immediately investigate and send a detailed report to Spitz. If the Supplier is not also the manufacturer of the goods, he is obliged to transfer these rights of inspection to his upstream suppliers and the manufacturer.

5. Duration and Termination of Contracts

- a. These General Purchasing and Contract Conditions are valid for the duration of the business relationship between Spitz and the Supplier.
- b. Spitz is entitled to terminate or withdraw from the contract if a substantial deterioration of the economic situation of the Supplier occurs, especially when seizures or other compulsory enforcement actions are carried out against him that endanger Spitz orders. The same applies if the Supplier requests the opening of insolvency proceedings or such proceedings are opened against him, or are refused due to a lack of assets.

6. Assignment of claims

The assignment of claims of the Supplier against Spitz to third parties is expressly excluded without written agreement from Spitz. Spitz is entitled to assigns claims against the Supplier to third parties.

7. Third Party Claims and Product Liability

- a. The Supplier is obliged to indemnify and hold Spitz harmless for any third party claims attributable to the goods delivered by the Supplier.
- b. The Supplier is obliged to have insurance coverage for direct and extended products, according to the relevant guidelines of the directives applicable to Austria for product liability and to provide evidence of this. The content and level of coverage can be detailed for individual cases by additional agreements. In the absence of any separate agreement the Supplier is obliged, however, to have insurance coverage of 20 times the annual sales to Spitz, to a maximum of € 10 million.

8. Choice of Law, Jurisdiction, Place of Fulfilment and General Provisions

- a. The competent court in Linz on the Danube, Upper Austria, shall be agreed as the exclusive jurisdiction.
- b. The legal relationship between the Supplier and Spitz is exclusively subject to the laws of the Republic of Austria, excluding a conflict of reference laws. The terms of the UN purchasing rights are expressly excluded.
- c. The place of fulfilment is the final destination named in the order. If no final destination is named in the order, then the place of fulfilment is Attnang-Puchheim, Upper Austria.
- d. In the event that a provision of this agreement is void or ineffective, then this shall not affect the validity of the remaining provisions. It is agreed that the invalid or ineffective provision is to be reinterpreted or supplemented so that the economic purpose foreseen with the void or ineffective provision is achieved in the best possible way. This applies equally to any loopholes.
- e. Any changes to these General Terms and Conditions must be made in writing.

Attnang-Puchheim, 26.03.2018

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S. SPITZ GmbH

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(Supplier)