

## General Terms and Conditions of Purchasing of Fatzer AG, Romanshorn

### 1. Scope

These General Terms and Conditions of Purchasing ("T&Cs") apply to all legal transactions (offers, contractual negotiations, contracts) between FATZER AG ("FATZER"), as purchaser, and its supplier ("Supplier"), as seller, regarding the purchase and delivery of items ("Delivery Items").

These T&Cs constitute an integral part of the legal relations existing between FATZER and the Supplier, in particular the purchase and delivery contracts, unless explicitly agreed otherwise. Provisions which deviate from these T&Cs are only legally binding if they are expressly offered by FATZER or are accepted by FATZER expressly and in writing.

By accepting an order from FATZER, the Supplier accepts and indicates its agreement with the fact that the sale and delivery of the Delivery Items will be governed by these T&Cs. Exceptions to this must be in writing. FATZER reserves the right to amend these T&Cs at any time. Amendments are valid as from the time of notification of the Supplier with respect to all legal relations established thereafter between FATZER and the Supplier.

Where the Supplier transfers the manufacturing, packaging and/or delivery of the Delivery Items, in whole or in part, to a third party (e.g. sub-supplier, sub-contractor etc.), the Supplier shall be obliged to impose these T&Cs, and in particular the conditions contained therein, upon the third party.

Unless expressly approved by FATZER, in writing, the Supplier's general terms and conditions and other contractual documents are expressly excluded. This also applies where general terms and conditions or other documents of the Supplier have been incorporated into an offer or order confirmation from the Supplier, or have been otherwise communicated to FATZER.

### 2. Conclusion of Contracts / Form

The Supplier is obliged to confirm orders for Delivery Items within three working days provided such confirmation corresponds to the usual processing method or the applicable agreements.

A contract between FATZER and the Supplier comes into effect with the agreement of FATZER. Agreement takes place by way of a written order, written confirmation and/or signature of a written contract.

Declarations in text form which are transmitted or recorded by way of electronic media (email, SMS and such like), are deemed to be written declarations by a party. The sender bears the burden of proving that such declarations have been received and accessed by the recipient. Such declarations are

deemed to have been received from the moment that they are accessed.

### 3. Cancellation

After approval has been issued by FATZER, until arrival of the whole shipment of Delivery Items at the Place of Performance (see Clause 7), FATZER shall be entitled to cancel orders subject to refunding all costs incurred by the Supplier in connection with this order. The right to a refund only exists, however, insofar as the Delivery Items may not be sold or used elsewhere by the Supplier. FATZER will only refund costs which the Supplier is able to substantiate by way of receipts.

### 4. General Obligations of the Supplier

The Supplier is obliged to manufacture, package and/or deliver the Delivery Items in accordance with the requirements and specifications which it receives from FATZER. The Supplier can only undertake technical changes to products/specifications with the written approval of FATZER.

The Supplier is obliged to deliver Delivery Items which are of perfect quality and suitable for the agreed purpose.

The Supplier is obliged and guarantees that it will comply with the applicable statutory provisions of Switzerland and the European Union when effecting contractual performance.

### 5. Dispatch / Packaging

All shipments of Delivery Items shall contain a delivery note indicating, in particular, the order number, number of items, article numbers, description of the article, delivery date, orderer and sender.

FATZER is entitled to return the packaging material invoiced by the Supplier to the latter at the same price. The transport costs for the return shipment shall be borne by the Supplier.

The Supplier is obliged to take back the packaging material free of charge where it cannot be disposed of easily as a result of being harmful to the environment.

### 6. Delivery Date / Partial Delivery

Delivery dates are binding. Compliance with the delivery date is determined by the date on which the Delivery Items are delivered to the Place of Performance (see Clause 7).

FATZER reserves the right to store shipments which arrive more than seven days before the agreed delivery date, at the cost of the Supplier, or to return them at the cost of the Supplier.

Where the Supplier fails to effect performance on the contractually agreed delivery date, FATZER

may, after granting a grace period and irrespective of any fault on the part of the Supplier, rescind the contract, in whole or in part, and claim compensation or uphold the contract and claim compensation in lieu of performance, and this shall be without prejudice to FATZER's right to insist instead upon continued performance and claim damages for default.

In the event of delayed delivery, the Supplier shall in any case grant FATZER, for each week of the delay, a reduction of 1% of the agreed contract price excluding VAT, but limited to a maximum of 10% of the agreed contract price per delayed delivery.

Where, in the individual case, a fixed date has been agreed upon, FATZER may, in the event of a failure to effect delivery on time, rescind the contract, in whole or in part, without granting a grace period and irrespective of any fault on the part of the Supplier, and claim compensation, or uphold the contract and claim compensation in lieu of performance. FATZER is however entitled to insist on performance of the respective contract, irrespective of any fault on the part of the Supplier, and claim default damages provided the Supplier is notified of this in writing within three days of expiry of the delivery deadline.

FATZER reserves the right to postpone agreed delivery dates. Notification of postponement of the delivery date must take place no later than 14 days before the agreed delivery date. The Supplier undertakes, in this case, to reserve the shipment for FATZER for up to six months with no effect on the cost. The provisions on invoicing under Clause 10 shall remain applicable.

The Supplier is not entitled to effect partial delivery without the express approval of FATZER. In the absence of approval, FATZER is not obliged to accept delivery.

All additional costs arising as a result of the partial delivery, particularly shipping costs, shall be borne by the Supplier. A partial delivery agreed in the individual case must be indicated as such on the delivery note by the Supplier.

Where, as a result of force majeure - e.g. natural disaster, epidemic, strike and other operational disruption arising through no fault of either party, lasting longer than three weeks - the Supplier is temporarily unable to effect performance, both parties to the contract are entitled to rescind the respective contract, in whole or in part, to the exclusion of claims for compensation, although in the case of the Supplier this only applies provided the latter notified FATZER in writing of the reason for the delay and its likely duration within one week of force majeure occurring.

## 7. Place of Performance, Benefit and Risk

Delivery of the Delivery Items shall take place exclusively at the delivery address designated in the

purchase order ("**Place of Performance**") and subject to the delivery conditions referred to therein.

A Supplier based abroad who effects delivery to a Place of Performance in Switzerland pursuant to Clause 7 expressly declares agreement to the fact that proceedings may be taken against such Supplier in respect of its liabilities at this special domicile.

The benefit and risk passes to FATZER upon delivery of the Delivery Items to the Place of Performance.

## 8. Documentation of Origin

In the case of cross-border transactions, the Supplier must provide with the Delivery Items the applicable proof of origin (movement certificate, declaration of origin on the invoice etc.) that is required for preferential import customs clearance in the country of destination. Additionally, with respect to Delivery Items purchased and delivered in Switzerland the Supplier shall provide a supplier's declaration as proof of origin. Any costs arising in this regard shall be borne by the Supplier.

The Supplier shall be responsible for the accuracy and completeness of the information contained in all proofs of origin. The Supplier is obliged, irrespective of any fault, to compensate FATZER or FATZER's customers for all loss (including, but not limited to, all duties, taxes, fees and other additional costs) incurred as a result of the preferential origin not being accepted by the competent authority in the country of destination because proof is lacking or incorrect.

## 9. Prices

The agreed contractual prices are fixed prices exclusive of VAT which contain all the costs incurred by the Supplier in connection with the delivery. This includes, in particular, the cost of transport, insurance and packaging as well as taxes, customs duty and charges relating to the import of the Delivery Items into the country of destination and/or delivery of the Delivery Items.

FATZER only bears such costs as are expressly designated as being its responsibility in the purchase order.

In the absence of any provision to the contrary in the purchase order, the price is "Delivered Duty Paid" (DDP) registered office of FATZER as per Incoterms 2010.

## 10. Invoicing / Payment Conditions / Set-off

The invoice must indicate the date on which the Delivery Items were dispatched as well as the order number and must be sent separately to FATZER immediately after the Delivery Items have been dispatched.

Unless otherwise expressly agreed, the agreed price shall be due for payment within 90 days after proper delivery to the Place of Performance and after receipt of the invoice. Compliance with the payment deadline is determined by the date on which FATZER carries out the payment transaction.

Payment of the invoice shall not constitute confirmation that the delivery is free of defects or that it is complete.

The Supplier is only permitted to set off counterclaims which are undisputed or *res judicata*. The Supplier shall have no right of retention or other withholding rights.

Where the delivery is defective, FATZER shall be entitled to withhold payment until proper performance has been carried out.

## 11. Warranty

Where the delivery is defective, FATZER may, without prejudice to any additional rights and irrespective of any fault on the part of the Supplier, claim subsequent performance (remedy of defects or replacement delivery). Subsequent performance is deemed to have failed after one unsuccessful attempt. Following failure of subsequent performance, FATZER may, irrespective of any fault on the part of the Supplier, opt either for a price reduction or rescind the respective contract. Where loss is incurred due to the defect, FATZER shall have the right to claim compensation in every case, irrespective of any fault on the part of the Supplier.

The limitation period for claims arising due to defective delivery shall be five years ("**Warranty Period**") starting on the date of delivery of the Delivery Items to the Place of Performance, unless defects were fraudulently concealed.

FATZER shall be entitled to claim in respect of defects in the Delivery Items for the entire duration of the Warranty Period. The obligations to effect immediate inspection and complaint under Sections 201 and 367 Swiss Code of Obligations are expressly excluded.

In other respects, the statutory provisions apply.

## 12. Marketing of Goods Elsewhere / Indemnity / Product Liability

Delivery Items ordered by FATZER, which have either not been delivered by the Supplier or not been accepted by FATZER, cannot be marketed elsewhere by the Supplier without the express written approval of FATZER insofar as these Delivery Items bear the company name "FATZER" or company slogans or brand names or were intended to be supplied especially and exclusively to FATZER. This applies *mutatis mutandis* to any manufacturing surpluses.

Every breach of the foregoing obligation – it being specified that different breaches may not be considered a single occurrence – shall oblige the Supplier to pay a contractual penalty to FATZER amounting to three times the agreed price for the Delivery Items, but in any case, at least CHF 100,000.--. This shall be without prejudice to FATZER's right to assert additional claims for compensation irrespective of any fault on the part of the Supplier.

The Supplier is obliged, irrespective of any fault, to indemnify FATZER against claims for compensation brought against FATZER by third parties, e.g. due to a failure to comply with statutory or other generally binding rules, insofar as the cause falls within the Supplier's sphere of control and organizational responsibility. In addition, the Supplier shall indemnify FATZER, irrespective of fault, against all costs including expenditure in respect of re-calls and the cost of legal proceedings. In other respects, the statutory provisions apply.

The Supplier is obliged to take out and maintain a product liability insurance with a reasonable minimum amount of cover. FATZER is entitled to request the Supplier to provide proof of such insurance.

## 13. Rights of Use / Third-party Rights

Where intellectual property rights arise or are acquired by the Supplier, particularly copyrights and other intellectual property rights, in respect of the Delivery Items which are specially and exclusively manufactured, packaged and/or delivered for FATZER by the Supplier, all rights to use and exploit such intellectual property rights shall pass to FATZER irrevocably, immediately and exclusively and shall be unrestricted as to content, space and time.

The Supplier is obliged to manufacture, package and/or deliver the Delivery Items unencumbered by third-party rights, in particular copyrights and other third-party intellectual property rights, which impair and/or prevent attainment of the contractually agreed purpose. The Supplier fully indemnifies FATZER in this regard against all third-party claims, including the cost of litigation, resulting from the breach of intellectual property rights due to FATZER's use of the Delivery Items manufactured, packaged and/or delivered by the Supplier.

## 14. Confidentiality / References

The Supplier is obliged to treat all legal relationships between FATZER and the Supplier and all commercial and technical details relating thereto, all findings arising from the collaboration with FATZER ("**Information**") and all information passed to the Supplier by FATZER in physical form such as technical documentation, drawings, plans and other materials ("**Documents**") as trade secrets and therefore as absolutely confidential. In particular, the copying of Documents is not permitted.

All Documents and any items provided on loan must be returned by the Supplier immediately upon request by FATZER, which may be made at any time; and must be returned in any case, without request, no later than the end of the legal relationship. The Supplier shall have no right of retention with regard to the Information and Documents and loaned items, respectively.

Advertising using FATZER's names and/or brands or other reference details is only permitted with the prior written agreement of FATZER.

The Supplier is obliged to conclude agreements corresponding to this Clause 14 with its own employees and agents (e.g. sub-suppliers, sub-contractors etc.) or to impose obligations to that effect upon them. The Supplier shall be liable for any failure by the Supplier's employees or agents to comply with the obligations under this Clause 14.

## **15. Social Responsibility, Environmental Protection and Anti-corruption**

The Supplier undertakes to comply with the respective statutory rules on dealing with employees, protecting the environment and health and safety at work and to work on reducing the adverse effects of its activities on human beings and the environment. For this purpose, the Supplier shall, where possible, set up and develop a management system in compliance with ISO 14001. In addition, the Supplier shall observe the principles of the UN Global Compact Initiative (<http://www.unglobalcompact.org>) and the ILO's International Labour Standards (<http://www.ilo.org>). These relate principally to the protection of international human rights, the right to collective bargaining, the abolition of child and forced labor, the elimination of discrimination in the field of employment and occupation, environmental responsibility and combating corruption.

In particular, the Supplier shall ensure on behalf of his company that the manufacture or processing of the Delivery Items takes or has taken place without the use of child labor within the meaning of ILO Conventions No. 138 and No. 182 and without violating the obligations arising from the implementation of this Convention or from other applicable national or international provisions on combating exploitative child labor. Further, the Supplier gives its assurance that its company, suppliers and their sub-contractors have taken active and effective measures to exclude child labor, within the meaning of ILO Conventions No. 138 and No. 182, from the manufacture or processing of the Delivery Items. The Supplier shall impose corresponding obligations on its sub-suppliers and their sub-contractors and undertake monitoring measures in this respect. FATZER is entitled to examine the content and the monitoring measures of the corresponding agreements, request information and documents from the Supplier and third parties, carry out on-the-spot checks at the Supplier's premises or have them carried out by a third party. The Supplier shall, upon request by FATZER, provide proof of the measures taken by it or its sub-suppliers. Upon request, the Supplier confirms absence of use of child labor in the manufacturing or processing of Delivery Items within the preceding 12 months. The Supplier is required to immediately inform FATZER if it has reasonable suspicion of use of child labor by it or its sub-suppliers.

The Supplier shall not use any conflict commodities or their derivatives in the manufacture of its Delivery Items. The Supplier provides FATZER at any time with all information and evidence, e.g. on the country of origine, mining or processing, including a Conflict Minerals Reporting Template, as requested by FATZER from time to time. Conflict commodities are, for example, metals or minerals consisting of or containing tin, tantalum or tungsten or gold as specified in Annex 1 of the Swiss Ordinance on Due Diligence and Transparency in relation to Minerals and Metals from

Conflict-Affected Areas and Child Labour, from conflict-affected or high-risk areas e.g. pursuant to Resolutions of the UN Security Council or the list of conflict-affected areas of RAND Europe on behalf of the EU Commission. Furthermore, conflict commodities are columbite-tantalite (coltan), cassiterite (tin ore), gold, wolframite and their derivatives from the Democratic Republic of Congo and its neighboring countries, defined in more detail in Article 1502 Section (e) (1) and (4) of the Dodd Frank Acts (USA). The Supplier shall take and implement suitable measures to ban the procurement and use of conflict commodities or their derivatives. It shall impose corresponding obligations on its sub-suppliers and their sub-contractors and undertake monitoring measures in this respect. In the event that the Supplier has reasonable suspicion of use of conflict commodities or their derivatives in the manufacture of the Delivery Items, it shall inform FATZER in advance or immediately, respectively, and provide FATZER with proof, on an annual basis, that it has not violated the ban on the use of conflict commodities or their derivatives. Upon request, the Supplier confirms to FATZER in written form that it has not used any conflict commodities or their derivatives during the preceding 12 months. FATZER is entitled to examine the use of conflict commodities or their derivatives by the Supplier, to request information and documents from the Supplier and third parties, carry out on-the-spot checks at the Supplier's premises or have them carried out by a third party.

FATZER has undertaken to implement all transactions without the use of blackmail, bribery or other unlawful, unethical or fraudulent activities. The Supplier undertakes to comply with all applicable law and regulations, particularly the US Foreign Corrupt Practices Act.

In connection with transactions with FATZER, the Supplier shall not offer, promise, authorize, give, demand or accept any gift, loan, commissions, consideration or other advantage from or to any person as an inducement to commit a dishonest or illegal act or a breach of contract, in order to obtain, keep or procure an order, or to secure any other unfair advantage. Under this provision, unlawful payments therefore include offers, promises and authorizations of payments, whatever the amount, made with the aim of expediting routine administrative tasks. The Supplier is obliged to introduce appropriate procedures for his employees so that they comply with all applicable anti-corruption laws and this provision.

The Supplier shall be responsible for the provision, accuracy and completeness of the information required under this section 15. The Supplier is obliged, irrespective of any fault, to compensate FATZER for any direct or consequential losses, damages, injuries, expenses or claims from third parties that FATZER might incur in

connection with a breach of section 15 of these T&C's by the Supplier or its auxiliaries.

In the case of a breach of obligations pursuant to section 15 of these T&C's by the Supplier or its auxiliaries, FATZER is entitled to terminate without notice any agreements with the Supplier. No claims of the Supplier or third parties against FATZER may arise in connection with such termination by FATZER without notice.

## 16. Data protection

In the context of its legal relationship with FATZER AG, the supplier undertakes to adhere to the relevant provisions of the EU's General Data Protection Regulation (GDPR) as a controller or processor. The supplier undertakes to only collect, process, disclose or make available personal data for the purpose of the performance of its contractual relationship with FATZER AG and to only store this data in fulfillment of statutory retention obligations. Processing of the data for its own purposes or the purposes of a third party is not permissible. The transfer of personal data to third parties requires the prior written consent of FATZER AG. Should the supplier process personal data from FATZER AG in the context of a contractual relationship, the supplier and FATZER AG shall enter into a corresponding contract as defined by Art. 28 GDPR. The supplier guarantees the technical and organizational measures required to maintain the confidentiality [etc.] of personal data in accordance with the GDPR. In the context of its legal relationship with FATZER AG, the supplier undertakes to only employ persons who are trained in data protection and are obliged [by entering into non-disclosure agreements] not to collect, process or use personal data in an unauthorized manner both during and after their activities.

Upon request, suppliers to FATZER AG must present any necessary information concerning data protection as well as a data protection concept.

## 17. Severability

Where individual provisions of these T&Cs are considered, by a competent arbitration tribunal, official court of law or competent authority, to be invalid or ineffective, this shall have no effect on the validity of the other provisions or on the T&Cs as a whole. The Parties will endeavor to replace the invalid provision with a valid provision which comes as close as possible to the legal and economic purpose of the invalid one.

## 18. Governing Law and Jurisdiction

All legal relationships between the Supplier and FATZER shall be governed by substantive Swiss law. The Vienna Sales Convention shall not apply.

The exclusive place of jurisdiction shall be the place where FATZER has its registered office. However, FATZER shall also be free to apply to the court located in the place where the Supplier has its registered office.

Romanshorn, October 01, 2023