

# General Terms and Conditions of Purchase and Order

Status: 18 April 2017

General Terms and Conditions of Purchase and Order (“**Purchase Conditions**”) of **Phoenix Mecano Keszemét Kft.**(registered seat: **H-6000 Keszemét, Szent István krt 24**, company registration number: **Cg.03-09-102028**) (in the following “**Purchaser**”) for use vis-à-vis the enterprises (in the following “**Vendor**”) (Purchaser and Vendor hereinafter together referred to as the “**Parties**”). The following provisions will be indicated in bold letters in these Purchase Conditions: (i) which essentially differ from the laws; and (ii) which essentially differ from the ordinary contractual practice.

## 1. Applicable Terms

1.1 The legal relationship between the Purchaser and the Vendor in respect of supply of the goods or other services (in the following together “**Goods**” or “**Delivered Goods**”) shall be governed exclusively by these Purchase Conditions, provided however, that the Parties may agree on additional or deviating terms in writing.

1.2 The Purchaser expressly objects to conflicting terms. Acceptance without reservation of the 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 concerning supply of the Goods.

## 2. Purchase Contract

2.1 All purchase contracts (including the 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 the text form. The written form requirement is also deemed complied with if communications are sent by remote data transmission or facsimile transmission.

2.2 If the Vendor does not accept an order within two weeks 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. The acceptance of the order is expressly limited to the provisions included in the order.

2.3 Insofar as this is reasonable for the Vendor, the 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 the 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 within the quantities scheduled for the respective following period. This purchase obligation shall be fulfilled through orders according to Section 2. **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, unless expressly otherwise agreed by both Parties.** The Vendor shall automatically take into account changes to the delivery schedules and/or quantity frameworks in its production plans and arrangements for stocks/materials.

2.6 With acceptance of the orders, the Vendor warrants that the Delivered Goods shall comply with the applicable EU regulations as well as the statutory provisions, including without limitation to, RoHS II Directive (2011/65/EU) and EU REACH Regulations (No. 1907/2006), and the Delivered Goods shall contain no materials injurious to the safety and human health, which, in particular, are listed by ECHA as “substance of very high concern” (echa.europa.eu), unless they are approved and marked accordingly.

2.7 The Vendor warrants that it shall comply with all the applicable laws, regulations, guidelines and requirements in connection with the supply of the Goods to the Purchaser, and shall provide all the documents required for export and/or import of the Goods, in particular their certificates of origin, export or import licence.

## 3. Prices, Payments and Assignment

3.1 The prices agreed upon are fixed prices and include all incidental services (such as including costs for packaging, transport and customs clearing formalities, if any), unless expressly otherwise agreed by both Parties in the order and acceptance or in other written form.

3.2 Unless otherwise expressly provided in writing, all the prices shall be the ones under “DDP” (Incoterms 2010) to the Purchaser’s designated plant or the agreed destination. VAT is not included.

3.3 Invoices shall be executed in two copies and shall include the order number, article name, unit of measurement, quantity, unit price and total purchase price, furthermore all other mandatory information required by the applicable Hungarian laws.

**3.4 Unless otherwise expressly agreed in writing, the payment shall be made upon receipt of the satisfactory delivery as well as the relevant official invoice, at the Purchaser’s discretion, either within 20days less 2% discount or within 30 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 and Packaging**

**4.1 Unless expressly otherwise agreed in writing, deliveries shall be made to the Purchaser’s designated plant or the agreed destination under “DDP” (Incoterms 2010) and passing of risk occurs upon handover to the Purchaser in the aforementioned place.**

**4.2 Partial delivery requires the prior written consent of the Purchaser. The Purchaser reserves the right to accept the individual cases of the surplus or short deliveries and shall also have the right to refuse acceptance of the early deliveries without falling into default of acceptance.**

4.3 The notice of delivery shall include at least the description of the article, the article number, quantity, date, delivery address and time as well as the Purchaser’s purchase order number.

4.4 The Vendor shall also provide the Purchaser with the documents and data of the Goods, including but without limitation to country of origin, export or import licence (if any).

4.5 If the Delivered Goods contain hazardous materials, the Vendor shall provide the Purchaser with the up-to-date material safety data sheet and mark the Goods according to the CLP regulation (1272/2008/EC).

4.6 The Vendor warrants that the packaging withstands the mechanical and climatic strains during the transportation as well as storage, and conforms to any special requirements set out by the Purchaser from time to time, and that the Goods shall be packaged properly to be protected from being damaged or impaired otherwise.

#### **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 the delivery dates and times.

5.2 If the Parties do not agree on “DDP” for deliveries, the Vendor shall prepare the Goods for delivery in good 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 as well as the agreed quality cannot be met.

#### **6. Delay of Delivery**

**The Purchaser is entitled to a penalty in the amount of   2  % of the delivery value per week commenced in which Vendor is in delay with the delivery, provided that the maximum penalty shall amount to   10  % of the delivery value.** The Purchaser may demand payment of the penalty along with delivery. Any statutory claims the Purchaser is entitled to due to the delay in delivery remain unaffected and the Vendor shall be fully liable for extra cost and all damages and losses due to the late delivery if the agreed delivery deadlines are not met. Acceptance of delayed deliveries without reservation shall not be deemed a waiver of such claims.

## **7. Defects as to Quality and Defects in Title, Quality Warranty Period, Violation of Third Party Rights**

7.1 The statutory provisions on defects as to quality and defects in title shall apply and the Purchaser shall be entitled to compensations and damages for any nonconformity of the Goods in any kind against the Vendor, without prejudice to the rights provided for in the following.

7.2 Acceptance is effected subject to the reservation of an examination for faultlessness, in particular also including accuracy and completeness. The Purchaser shall notify the Vendor of 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 \_6 months after taking delivery of the Delivered Goods by the Purchaser, it will be refutably assumed that the defect already existed at the time of taking delivery of the Delivered Goods, 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 (“**Nacherfüllung**”) free of charge, or other statutory remedy (i.e. primarily the repair or exchange of the defective good, or secondly the proportionate discount in payment or cancellation of the purchase contract), at his free discretion; the Vendor may refuse the subsequent performance the Purchaser selected only if it is only possible at disproportionate expense.

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 (such as repair or exchange of the defective good) has expired without success, or in urgent cases, especially to ward off acute danger or to prevent damage, unless the Vendor is entitled to refuse the 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 the subsequent performance is not necessary.

**7.6 The guarantee period for defects as to quality shall be 36 months after taking delivery of the Delivered Goods by the Purchaser from the Vendor, however not earlier than 24 months after delivery of the final products to the end-customers of the Purchaser.** In the event of occurrence of the quality problem in the Goods, the Vendor shall be obliged to the subsequent performance at the discretion of the Purchaser, free of charge.

7.7 The Vendor is also obliged to observe the provisions of § 1502 b Dodd Frank Wall Street Reform and Consumer Protection Act. The Vendor shall not apply the conflict raw materials in the Delivered Goods, which are defined in Section 1502 (1) and (4) of Dodd Frank Act. The Vendor shall be obliged to take and implement the appropriate measures to refrain from acquisition and use of the conflict raw materials. If the Vendor uses the conflict raw materials in its Delivered Goods, it shall prove to the Purchaser on a yearly basis that it is not in violation of the prohibition on use of the conflict raw materials.

7.8 Irrespective of fault, the Vendor shall be liable for claims due to the violation of third party rights, including ownership or filings for industrial and intellectual property rights (in the following together “**Third Party Rights**”) resulting from the contractual use of the Delivered Goods. The Vendor shall indemnify the Purchaser and the Purchaser’s customers against all claims resulting from the violation of the Third Party Rights. The Vendor is aware that the Purchaser’s Goods are used worldwide.

7.9 The Vendor shall not be liable for infringement upon Third Party Rights 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.

7.10 The Parties shall inform one another of the violations of Third Party Rights, 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.

## **8. Product Liability and Insurance**

8.1 Unless otherwise provided in these terms, the Vendor is liable vis-à-vis the Purchaser according to the statutory provisions for product liability. Insofar as the Vendor is liable vis-à-vis the Purchaser, it shall be obliged to indemnify the Purchaser against all third Party claims.

8.2 In the event a product liability claim is asserted against the Purchaser, the Vendor is obliged to indemnify and hold the Purchaser harmless from such claims if and to the extent the damage or loss was caused by the defective Goods supplied by the Vendor, In this case, the Vendor shall also be obliged to reimburse the Purchaser for all the costs and expenses resulting from necessary measures to avert dangers, in particular any legal action or 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 a licensed insurer. **The product liability insurance shall include [the costs of the acquisition of new product and the costs which arose in connection with the repair, exchange, replacement, recall or annulment of the defective product]. The insurance territory shall be worldwide.** Proof of such insurance shall be provided to the Purchaser upon request. Any further claims of the Purchaser remain unaffected.

## **9. Retention of Title**

**The Purchaser expressly objects to any retentions of title by the Vendor, and the retention of title by the Vendor requires the express agreement in writing in order to be valid.**

## **10. Supplies by the Purchaser**

10.1. The supplies provided by the Purchaser to Vendor for purpose of fulfilment of the purchase contract (“**Supplies**”) remain in the Purchaser’s ownership and may only be used as contractually agreed. Processing or transforming of the Supplies by the Vendor are carried out on behalf of the Purchaser.

10.2 If the Supplies are irrevocably mixed with other items not belonging to the Purchaser, the Purchaser shall acquire the joint title to the new item corresponding to the value of the Supplies compared to the other mixed items at the point of time of processing.

## **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**”). Production Tools which the Vendor purchases or manufactures to fulfil the delivery contract with the Purchaser at the Purchaser’s cost shall pass into the ownership of the Purchaser. 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 the purchase contracts with the Purchaser and shall handle them with the due care of a prudent business man.

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. Production Tools which will 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. Confidentiality**

12.1 The Parties will maintain strict confidentiality for all non-evident operational and technical information disclosed or otherwise obtained due to the legal 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 (such as employees, subcontractors).

12.2 Production Tools, drawings, outlines, construction data and similar objects, which are provided by the Purchaser, may not be provided or otherwise made accessible to unauthorised third parties; they may only be provided to the subcontractors of the Vendor after agreement on corresponding confidentiality obligations. Copying such objects is only permitted within the scope of operational requirements and the applicable laws after the prior written consent of the Purchaser.

## **13. Rescission and Termination**

13.1 In addition to the statutory rights of rescission or termination, the Purchaser shall have the right to cancel or terminate the purchase contract with immediate effect, if

- a) the Purchaser has ceased the supply to its customers;
- b) there is or threatens to be a fundamental deterioration to the financial circumstances or the production and business situations of the Vendor, which shall result in that the performance of the supply to the Purchaser is in jeopardy;
- c) the Vendor enters into bankruptcy, liquidation, dissolution, comparable debt settlement or the similar procedures according to the applicable laws;

- d) any Force Majeure event causes the failure to continue performing the purchase contract, which shall last for \_30 days;
- e) the Vendor is in violation of its obligations of supply to the Purchase, failing to rectify it upon receipt of the written notice of default from the Purchaser; or
- f) other circumstances as prescribed in the applicable laws and regulations.

13.2 If the Vendor rendered part performance, the Purchaser shall only have the right to cancel the whole purchaser contract if the Purchase has no interest in aforementioned part performance.

13.3 The additional statutory rights and claims shall not be limited and excluded by the regulations in this Section 13.

#### **14. Force Majeure**

Unforeseeable, unavoidable and grave events (“**Force Majeure**”) suspend the Parties from their respective obligations for the duration of the events. Force Majeure shall be acknowledged only if it has a direct impact on the fulfillment of these Purchase Conditions. 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.

#### **15. Final provisions**

15.1 The relationship between the Parties shall be governed exclusively by the laws of Hungary excluding the Hungarian rules on conflict of laws and the UN Convention on the International Sale of Goods (CISG). The Incoterms 2010 shall govern the interpretation of delivery clauses.

15.2 The place of performance for deliveries is the Purchaser’s designated plant or the agreed destination.

15.3 Any or all disputes arising out of or in connection with these Purchase Conditions shall be settled through friendly consultations between the Parties. The disputes unable to be solved through negotiation within 30 days after their occurrence shall finally be submitted to the Court of Arbitration of the Hungarian Chamber of Commerce and Industry (in Hungarian: “*Magyar Kereskedelmi és Iparkamara mellett szervezett Állandó Választottbíróság*”), for arbitration, acting on the basis of its rules of arbitration. The arbitration shall be held in Budapest, Hungary. The arbitration proceedings shall be conducted in Hungarian. In the course of settling disputes and the arbitration proceedings, the Parties agree to continue to perform their obligations under these Purchase Conditions as far as is reasonably practicable, except for the parts of these Purchase Conditions which are under arbitration. The arbitral award is final and binding upon both Parties. The arbitration fee shall be borne by the losing Party except as otherwise awarded by the arbitration tribunal.

15.4 These Purchase Conditions shall to the greatest extent possible be interpreted in such a manner as to comply with the applicable laws, but if any provision hereof is or becomes invalid or unenforceable or if there is an omission, the remaining provisions of these Purchase Conditions shall remain to be binding upon the Parties. The Parties hereto agree to replace any such invalid or unenforceable provision by a valid one which comes as close as possible to the original purpose and intent of the invalid or unenforceable provision. In the event of an omission or amendment, both Parties shall conclude the supplementary agreement in any writing form.

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