

General Purchasing Terms and Conditions for Deliveries and Services of the companies Candy Polstermöbel GmbH, Carina Polstermöbel-Vertriebs GmbH and 3C Holding GmbH

1. General Provisions

1.1. Unless expressly agreed otherwise, all orders of the companies Candy Polstermöbel GmbH, Carina Polstermöbel-Vertriebs GmbH and 3C Holding GmbH – hereinafter referred to as the 3C Group, even if only one of the stated companies is affected - are exclusively subject to the following terms and conditions. The terms and conditions of the Contractor or Supplier (hereinafter referred to as “Contractor”) in its general terms and conditions, confirmations of orders or other terms and conditions of sale are hereby expressly excluded. An unconditional acceptance of confirmations of orders or deliveries does not signify any acknowledgement of such terms and conditions.

1.2. Upon the initial delivery or service subject to the present Purchasing Terms and Conditions, the Supplier recognises their exclusive application also for all further orders.

1.3. Orders are only binding if they are made in writing, enclosing these General Purchasing Terms and Conditions. Any drawings, samples and specifications delivered with the order are specified in the order. Verbal agreements, promises and declarations of any kind are only legally valid if made in writing. The written form requirement is satisfied by the use of fax or e-mail. An offer by the 3C Group may only be accepted within a period of 14 days, unless agreed otherwise or unless the 3C Group sets a shorter period for acceptance.

1.4. These Purchasing Terms and Conditions apply regardless of the legal nature of the contract concluded with the Contractor, i.e. both to sales contracts, contracts for work, work and services and services as well as to all other contractual relations based on which the 3C Group is supplied with the Contractor’s deliveries or uses the Contractor’s services in any form whatsoever.

1.5. Unless agreed otherwise in these General Purchasing Terms and Conditions, the Incoterms as amended on the date of conclusion of the contract shall apply to the interpretation of internationally common contract terms.

2. Delivery and Shipping

2.1. The delivery shall take place at the agreed times in accordance with the order or more specifically the following instruction of the 3C Group. The Contractor shall indicate changes in the set dates and deadlines unsolicited without delay.

2.2. The Contractor must comply with the 3C Group’s respective “Supplier Contract with integrated Quality and Delivery Regulations”.

2.3. The Contractor must comply with the 3C Group’s and the freight forwarder’s / carrier’s shipping instructions. In all shipping documents, correspondences and invoices, the article name as well as the order and article numbers of the 3C Group shall be indicated.

2.4. Unless expressly agreed otherwise, the Contractor shall bear the costs of transport including packaging, insurance and all other ancillary costs.

3. Delivery periods, delivery dates

3.1. The delivery periods or dates stated in orders are binding and are considered to apply upon receipt at the place of performance.

3.2. The 3C Group is entitled to refuse to accept goods that are not delivered on the delivery date indicated in the order and send back these at the Contractor’s expense and risk or store them in a third party’s premises.

4. Quality, Acceptance, Sorting and Reworking Operations

4.1 The 3C Group’s respective “Supplier Contract with integrated Quality and Delivery Regulations” shall apply.

4.2 The Contractor warrants that the goods will conform to engineering specifications submitted, relevant standards and regulations as well as the state-of-the-art. It shall fill in and sign the “Information Sheet for Suppliers: Notification under the REACH Regulation”

4.3. The duties to inspect goods of Section 377 of the German Commercial Code [HGB] shall not apply, unless the defect is obvious. If there are obvious defects, the notice period shall be two weeks from the delivery of the goods at the destination.

4.4. The measurements, weights and quantities of delivered goods in the values determined upon acceptance of the goods are binding.

4.5. In the case of an agreed contractual penalty for delay in delivery, the claim for a contractual penalty shall still remain intact even if it is not expressly asserted upon acceptance of the delivery. Further claims shall likewise continue to exist without a reservation to that effect upon acceptance of the goods.

4.6 If the 3C Group makes an arrangement with the other party to the contract, according to which it is urgently necessary for scheduling reasons for the 3C Group to arrange for necessary sorting or reworking operations to be carried out in the event of defects to the delivered products, these sorting or reworking operations shall be carried out, at the option of the 3C Group:

4.6.1. By the Supplier’s employees or

4.6.2. By third-party companies at the Supplier’s expense or

4.6.3. By employees of the 3C Group at the Supplier’s expense.

4.7. If a test report must be drawn up at the Supplier’s request, the 3C Group shall apply a flat fee for the additional expenditure incurred by the Quality Management, Warehousing, Purchasing and Accounting departments of:

4.7.1. EUR 25.00 plus 19 % VAT for the test report.

4.7.2. Hourly rate for 3C reworking operations of the employees of the 3C Group: EUR 60.00 plus 19 % VAT.

4.8. Goods which are not in order and for which no sorting or reworking operations have to be carried out must be collected by the Supplier by no later than 1 week from the mailing date of the complaints report. If this does not occur, the 3C Group shall arrange for a return delivery to be carried out at the Supplier’s expense.

The re-delivery of a returned batch reworked by the Supplier must include a Supplier’s report with details of the corrective actions. The reworked or sorted articles must be re-delivered separately. These parts must be specially marked on the delivery note and the packaging.

5. Prices and Payment Terms

5.1 Agreed prices are maximum prices; price reductions in the time between the order and the payment of the invoice shall be for the benefit of the 3C Group.

5.2 All invoices must bear the date of the order as well as the article name, the order and article number of the 3C Group and must be sent in duplicate. Invoices that do not meet the above criteria shall be returned without this leading to any loss of the 3C Group’s rights under the agreed payment terms. Invoices may not be enclosed with the shipment. Until the receipt of an invoice in proper form, a delay in payment by the 3C Group shall be excluded. Further legal obligations (especially under tax law) of the Contractor regarding the drafting of invoices shall remain unaffected. Thus, for example, the VAT must be shown separately.

5.3 Payment shall be made subject to proper delivery as well as correct prices and accurate calculations. If a defect subject to warranty obligations is established, the 3C Group shall be entitled to retain payment until the warranty obligation is fulfilled.

5.4 Invoices are payable in accordance with the individually agreed payment conditions.

6. Contractual Penalties

Should we be subjected to contractually agreed penalties due to failed or delayed deliveries of materials, unless agreed in writing otherwise, we will pass on these to you, together with the supporting documents available to us and will thus subject you to these.

7. Force Majeure

7.1. Unforeseeable, unavoidable and / or extraordinarily occurrences for which are not the 3C Group’s responsibility and have a considerable effect of its operation or do not even lead to the suspension of the operation shall exempt the 3C Group from the acceptance obligation owed.

7.2. The 3C Group is entitled to withdraw from the contract if an occurrence as described in Item 7.1 lasts longer than three months, unless this concerns a custom-made produce for us. In the case of a withdrawal from the contract, the Contractor may not derive any claims for damages from this. If the 3C Group makes no use of its right of withdrawal, it shall be exempt from obligation to provide the contractual service during the existence of the impediments stated in Item 7.1

8. Set-off and Assignment

8.1 The Contractor is only entitled to set off claims which are undisputed or recognised by declaratory judgement.

8.2 The assignment of claims against the 3C Group is only valid with its written consent; in other respects this is excluded.

9. Warranty

9.1. Unless provided otherwise by the applicable “Supplier Contract with integrated Quality and Delivery Regulations” or hereinafter, the Contractor’s warranty obligation shall be in accordance with the statutory regulations. The Contractor shall indemnify the 3C Group on first demand against all third party claims which are brought for defects, breach of third party rights or product damage of its delivery on account of its proportional causation. The Contractor warrants the existence of appropriate product liability insurance.

9.2 The Contractor is obliged to reimburse appropriate costs for a recall campaign under product liability law. The 3C Group will communicate its opinion as soon as possible to the Contractor beforehand.

9.3 In case of a substitute delivery and remedy of defects the statute-of-limitations shall begin to apply new for replaced and subsequently improved parts unless we had to assume according to the conduct of the Supplier that it did not consider itself to be obliged to carry out the measure, but only carried out the substitute delivery or remedy of the defects out of goodwill or similar reasons.

9.4 In urgent cases – in particular in order to defend exceptionally high damages -, in order to remedy slight defects as well as in the event that the Supplier is in default with the remedy of a defect, we entitled after previously informing the Supplier and after the expiry of a short final deadline which is reasonable for the situation, to remedy the defects and possible thus caused damages at the costs of the Supplier ourselves or have these remedied by third parties at the Supplier’s costs. This shall also apply if the Supplier delivers or provides the service late and we have to remedy the defects immediately in order to avoid an own delay in delivery.

9.5 The Supplier also has to assume responsibility for defects of title for which it is not at fault. In this case we are also entitled to assert damages according to § 437 BGB. The statute of limitations of our claims for defects is in the event of defects of title 10 years after delivery.

9.6 The statutory regulation applies to our claims for recourse owing to faulty goods (§ 478, 479 BGB), however with the following supplements: We shall also be entitled to the claim for recourse against the supplier if it does not concern a consumer goods purchase. We can thus also charge the Supplier with claims for damages and reimbursement of expenses (line with § 478 Par. 1 BGB), which our buyer asserts against us.

10. Information and Data

Drawings, designs, drafts, samples, manufacturing regulations, internal data, tools, installations, etc., which we have transferred to the Contractor for making the offer or for carrying out an order shall remain in the ownership and the intellectual property of the Contractor. They may only be used, reproduced or made available or disclosed to third parties if this is absolutely necessary for dealing with our order. They must be kept safely with the care of a prudent businessman. They must be sent back in a useable condition with the last delivery or service from the respective order.

11. Third Party Property Rights

11.1 The Contractor affirms that the use of the sold goods in accordance with their intended purpose does not conflict with any third party rights and in particular that no third party rights are breached. If a claim is brought against the 3C Group for a possible breach of third party rights, such as e.g. copyrights, patent rights, design patents and other property rights, the Contractor shall indemnify it against this and exempt it from any related obligation.

11.2 In the event of an infringement of industrial property rights the Supplier is obliged to compensate us for all damages suffered by us from this infringement. In this case we are also entitled to obtain the necessary permission for the delivery, commissioning, use, resale etc. of the object of delivery at the Supplier’s costs from the holder of such property rights

12. Legal Disputes

Should our customers serve us with third party notice to failed or delayed deliveries of materials, unless agreed in writing otherwise, we will pass on this to you together with the costs thereby incurred, together with the supporting documents available to us and will thus subject you to this.

13. Data Protection

The Contractor hereby declares its irrevocable consent to communicated personal data being handled or processed per order in compliance with the statutory provisions.

14. Place of Performance / Legal Venue / Legal Status / Contract Language

The place of performance for the delivery shall be the respective office reference of the 3C Group. The law of the German Federal Republic shall apply exclusively under exclusion of private international law, uniform international law and in particular under express exclusion of the UN Convention on the International Sale of Goods. The legal venue shall be Rheda-Wiedenbrück, Germany. The contract language shall be English.

15. Deviating Agreements

Agreements that deviate from the content of these General Purchasing Terms and Conditions are only valid if they are recognised by us in writing.

16. Severability Clause

Should individual provisions of these General Purchasing Terms and Conditions be or become null and void, the terms and conditions shall remain valid in other respects.