

General Terms and Conditions of Purchase and Procurement (As of October/2022)

I. Scope of Application

1. The following general terms of purchase and procurement ("the "Terms") shall be valid for all offers, declarations of acceptance and contracts of *Dradura Group GmbH* and **DRADURA USA Corp** ("Dradura") and shall apply to the supply of goods and/or the provision of other services of any type between the supplier of such goods or the provider of such services ("Contractor") and Dradura.

2. To the extent not otherwise provided for under express individual agreement, the above legal relationship between Dradura and the Contractor is governed by these Terms. These Terms apply to all purchases between the Contractor and Dradura. Deviating or conflicting regulations of the Contractor, such as their general terms and conditions of business or sale and delivery, shall only apply if expressly acknowledged by Dradura in writing prior to conclusion of the relevant agreement; further separate objection by Dradura is not required.

II. Offers, Orders, Contract Conclusion

1. Offers by the Contractor are made free of charge and do not constitute any obligations until Dradura expressly accepts such offer.

2. In its offer, the Contractor will expressly point out any deviations from Dradura's initial request and, additionally, offer alternatives which are technically or economically cheaper than the request.

3. If Dradura submits a binding offer and this is not accepted by the Contractor within the period specified in the offer or, in the absence of such information, within a period of two (2) weeks from receipt of the offer, then the offer expires. The offer and these Terms shall be deemed to have been accepted by the Contractor in their entirety and without modification if the Contractor accepts the offer.

4. Unless the parties have individually agreed otherwise before placing the order, only orders placed in writing are binding to Dradura and verbal agreements, changes or additions to the order, require written confirmation by Dradura for their effectiveness.

5. Orders placed electronically that do not exceed an order value of EUR 5,000.00 are – unless there is a legal obligation to act in written form – also effective without a handwritten signature.

6. The order of precedence of the provisions applicable to the deliveries and services commissioned by Dradura, in the absence of a deviating individual legal agreement, is as follows: (a) our order; (b) specification or tender specifications; (c) present Terms; and (d) Contractor's offer.

III. Time of Delivery and Performance

1. All dates or deadlines specified in the order for delivery and performance are binding. Delivery of the defect-free goods during normal business hours with the necessary shipping documents to the address provided in the order..

2. The unconditional acceptance of delayed deliveries or services does not constitute a waiver of the claims for compensation to which we are entitled due to the delayed delivery.

3. The Contractor is obliged to inform Dradura immediately in writing if circumstances occur which prevent the Contractor from satisfying the agreed upon deadlines cannot be met. The agreed upon deadlines will not be extended upon such notice. If the Contractor fails to notify Dradura, Contractor may not subsequently invoke these circumstances against us.

4. Early delivery by the Contractor – in whole or in part – requires the prior written consent of Dradura.

5. In the event of default on the part of the Contractor, Dradura shall be entitled to terminate without notice and to bring forth all relevant statutory claims. Notwithstanding the foregoing, in the event of default on the part of the Contractor, Dradura shall be entitled to recover liquidated damages in the amount of two tenths of percent (0.2%) of the price for the value of the order affected by the delay –with a maximum of five percent (5.0%) of that price – for each working day of the delay Liquidated damages are to be offset against possible further claims for damages. The Contractor acknowledges that delayed performance will damage Dradura, but the nature such damages is difficult to ascertain. Accordingly, the liquidated damages will apply. Liquidated damages are not intended to be a penalty and are solely intended to compensate for damages.

6. If the Contractor does not deliver or perform following written notice and and a reasonable cure period set by Dradura, Dradura shall be entitled to use a third party of their choosing to fulfill the order or service and to recover any amounts paid as reimbursement from the Contractor of the additional expenses and costs necessary for this purpose. In all other respects, Dradura reserves the right to claim damages and to terminate all remaining obligations upon the the expiration of the cure period

IV. Deliveries, Transfer of Risk, Default of Acceptance, Packaging, Export

1. Unless expressly agreed otherwise, deliveries shall be made "free domicile" (DDP destination according to INCOTERMS 2020) to the place specified in the order. If the place of destination is not specified and nothing else has been agreed, delivery must be made to the registered office of Dradura at 197 Bosch Blvd. New Bern NC 28562 USA. The place of destination is also the place of performance.

2. The risk of accidental loss and accidental deterioration of the goods shall pass to Dradura upon handover at the place of performance. Insofar as acceptance has been agreed, this shall be decisive for the transfer of risk.

3. If Dradura is in default of acceptance, the Contractor may demand compensation for additional expenses in accordance with the relevant statutory provisions.
4. The goods must be packed properly and in environmentally friendly materials that do not pollute the material recycling. In all other respects, the statutory packaging regulations shall apply. The costs for packaging must be listed separately in the offer and invoice at cost price. In the case of delivery of dangerous goods, the Contractor must pack, label, and ship them in accordance with the relevant national and international regulations and particularly fulfil all obligations incumbent on it as a supplier in accordance with the European Chemicals Regulation for the registration, evaluation, approval, and restriction of chemicals - EC Regulation 1907/2006/EC - regarding the delivery of the goods.
5. At our request, the Contractor will immediately provide to Dradura free of charge the documents and declarations required for any export of the delivery to domestic and/or non-European countries, in particular declarations of origin, health certificates and export control classifications. Delays due to export inspections or approval procedures do not constitute a delay on our part.

V. Prices, Retention of Title, Set-off and Retention Rights

1. Unless expressly agreed in writing, the agreed upon price is fixed. Fixed prices also include expenses, external costs, and travel expenses as well as "free domicile" packaging and delivery expenses. Sketches and drafts are also compensated with fixed prices. Any additional costs necessary for the fulfilment of services shall be borne by the Contractor. Should the Contractor reduce its prices or improve the conditions in the period between order and delivery, the prices and conditions valid on the day of delivery shall apply.
2. The transfer of ownership of the goods to Dradura must take immediately upon delivery. Dradura shall remain authorized, in the ordinary course of business, even before payment of the purchase price, to resell the goods with advance assignment of the resulting claim; alternatively, the simple retention of title extended to resale shall apply. In any case, all other forms of retention of title are excluded, particularly the extended retention of title, the forwarded retention of title and retention of title extended for further processing.
3. The Contractor shall only be entitled to offset if the counterclaim is undisputed or has been legally established. The Contractor is only entitled to exercise a right of retention to the extent that his counterclaim is based on the same contractual relationship.
4. An assignment of the Contractor's claims is only permitted with prior written consent of Dradura.

VI. Invoices, Payments

1. Invoices must state the invoice number, order number, quantity, price, and other assignment features (in particular, our article number) in the original and sent to the billing address specified in the order. The invoices are to be sent separately from a delivery of goods. For deliveries from territories outside the customs territory of the USA, a copy of the invoice or a pro forma invoice must be attached to the delivery of the goods.
2. Unless otherwise agreed, payment periods shall commence from the date of receipt of invoices that meet the requirements under the preceding Section VI.1 of these Terms
3. Payment is subject to the determination of the conformity of the contract and completeness of the delivery a/o service.
4. Unless otherwise expressly agreed, payment due within thirty (30) days of the start of the payment period in accordance with Section VI.2 of these Terms. If payment is made within fourteen (14) days, the Contractor shall grant a three percent (3%) discount on the net amount of the invoice.
5. In the case of bank transfer, payment shall be deemed to have been made on time if the transfer order is received by the credit institution in sufficient time to expect timely receipt of payment under normal circumstances; delays of the credit institutions involved in the payment process are not attributable to Dradura.
6. Payments made by Dradura do not imply any acknowledgement of the conditions and prices stated in the invoice and do not affect Dradura's rights to improperly rendered delivery or service, inspection rights, or the right to object to an invoice for other reasons.

VII. Force Majeure

Force majeure, in particular unrest, official measures and other unforeseeable, unavoidable, and serious events release the contractual parties from the delivery and performance obligations for the duration of the disruption and to the extent of its effect. The affected party shall immediately inform the other contractual party in writing of the occurrence of force majeure and its expected duration. The contractual parties will adapt their obligations to the changed circumstances in good faith. However, Dradura is entitled to terminate the contract without notice, if Dradura's interest in performance has ceased to exist as a result of the occurrence of force majeure.

VIII. Warranty, Notification of Defects, Liability for Defects

1. The Contractor warrants that the deliveries and services are free of material defects and defects of title, which have agreed upon the guaranteed quality, have been professionally and appropriately and qualitatively flawlessly created, comply with the agreed product or service specifications, are suitable for the use assumed after the order and comply with the agreed and legal requirements specified in these Terms. If the delivery or service deviates from the aforementioned requirements, it is defective.
2. N.C. Gen. Stat. Chapter 25, the Uniform Commercial Code (the "statutory provisions apply to the commercial obligation to inspect and give notice of defects with the following provision: Dradura's obligation to inspect is limited to defects that are openly recognizable during the incoming goods inspection under external inspection, including the delivery documents, as well as during our quality control in the random sampling procedure (e.g., transport damage, incorrect and short delivery). Insofar as acceptance has been agreed, there is no obligation to inspect. In all other respects, it depends on the extent to which an investigation is feasible in the ordinary course of business, taking into account the circumstances of the individual case. The obligation to give notice of defects discovered later remains unaffected. In all cases, our complaint (notification of defects) shall be deemed to be immediate and timely if it is received within ten (10) calendar days by the Contractor.
3. Unless otherwise agreed in an individual contract, the warranty period is at least twenty-four (24) months from the transfer of risk in accordance with Section IV.2 of these Terms, unless a longer statutory period applies.
4. The Contractor's warranty obligation shall be governed by the statutory provisions, unless otherwise stated in the following paragraphs 5 to 8.
5. In the event of defective delivery, the Contractor shall, at the discretion of Dradura, provide a replacement free of charge, grant a price reduction in accordance with the statutory provisions on the reduction or remedy the defect free of charge. In urgent cases, Dradura is entitled - upon prior consultation with the Contractor - to remedy the defects at the expense of the Contractor or to have them carried out by a third party or otherwise procure a replacement. The same applies if the Contractor is in default with the fulfillment of its warranty obligations.
6. The Contractor shall be liable for replacement deliveries and repair work to the same extent as for the original delivery item, i.e. for transport, travel and labor costs, without limitation. The warranty period for replacement deliveries begins at the earliest from the transfer of risk of the replacement delivery in accordance with Section IV.2 of these Terms.
7. If a limit quality value for the delivery has been agreed with by Dradura and the Contractor, Dradura are entitled to reject the delivery completely if the agreed limit quality value is exceeded or to inspect it completely at the expense of the Contractor. If the limit quality value is adhered to, Dradura's claims due to hidden defects discovered later remain unaffected.
8. Insofar as the Contractor is responsible for product damage, it shall indemnify Dradura on first request from all claims of third parties that are raised due to defects or product damage. The Contractor assures the existence of an appropriate product liability insurance. The Contractor is also obliged to reimburse reasonable costs for a recall campaign based on product liability law. A notification of the statement will be made by us as soon as possible to the Contractor.

IX. Third Party Rights

1. The Contractor guarantees that there are no property rights of third parties that conflict with the intended use of the contractual deliveries and services by Dradura and that no further licenses, approvals, consents or payments in connection with property rights of third parties are required thus that Dradura can use the contractual deliveries and services as provided for in the contract or in the order.
2. The contractual parties must inform each other immediately of any claims raised or threatened regarding the rights of third parties and inform the other contractual party immediately if they become aware of violations or alleged violations of the rights of third parties in connection with the contractual deliveries and services.
3. Upon first written request, the Contractor shall indemnify Dradura without restriction against all claims, demands, costs, encumbrances, losses, claims, damages and expenses arising from the infringement or alleged infringement of the property rights of third parties. In addition to these obligations, the Contractor may, at its own discretion and at its own expense, either: (a) modify or replace the deliveries a/o services in such a way as to avoid infringement or alleged infringement of third party rights, but the services shall continue to comply in all respects with the contractually agreed requirements; or (b) obtain the right for us to (further) use the deliveries a/o services in accordance with the contractual agreement.
4. If the Contractor does not remedy the violation of the rights of third parties within a reasonable period of time, Dradura shall be entitled, at its own discretion, to withdraw from the contract and to assert damages or a corresponding reduction in the consideration.

X. Provisions and Means of Production

1. Dradura reserves all ownership rights and copyrights to drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids as well as software provided to the Contractor in any form in connection with the conclusion of a contract. Any materials provided to Contractor may only be used for the production of the deliveries a/o services ordered by Dradura.
2. Substances and parts provided by Dradura shall be stored, designated, and managed separately free of charge. The processing of fabrics and the assembly of parts is done for Dradura. It is agreed that, in proportion to the value of the provision to the value of the entire product, both Contractor and Dradura are co-owners of products manufactured using Dradura substances or parts, which are stored for Dradura by the Contractor.
3. The Contractor shall not be entitled to a right of retention, for whatever reason, in respect of the supplies. Supplies and reproductions thereof may not be made accessible to third parties (including subcontractors).

XI. Confidentiality

Each party shall use all documents and knowledge which it receives from the other party for contractual purposes only and shall keep secret from third parties with the same care as its own corresponding documents and knowledge. They may only be disclosed to third parties with the prior written consent of the other party. The confidentiality obligation shall continue to apply even after the execution of this contract; it expires if the knowledge contained in the illustrations, drawings, calculations, software, and other documents provided has become generally known. This obligation begins with the first receipt of the documents or knowledge and ends sixty (60) months after the end of the business relationship. It does not apply to documents and knowledge that are generally known or that were already known at the time of receipt without any obligation of secrecy, or that are subsequently transmitted by a third party entitled to pass them on or that are developed without the use of the documents or knowledge to be kept secret.

XII. Rescission, Termination

1. In the event of a breach of contractual obligations by one party, the other party is entitled to terminate the contract upon written notice.
2. A mutual right of termination exists if the contract has not yet been fulfilled. This right shall apply in particular to cases of cessation of payments or the opening of insolvency proceedings, the refusal to fulfil such proceedings for lack of assets or the initiation of comparable proceedings against a contracting party. If the Contractor is affected by one of the above events, Contractor will support Dradura to the best of its ability in the relocation of the production of the goods to Dradura or a third party, including a licensing of industrial property rights necessary for the production on terms customary in the industry.
3. If the contract between the parties is a continuing obligation, each party is entitled, in particular in the event of a breach of essential contractual obligations by the other party, is not remedied within a reasonable cure period following written notice of the same, to terminate the continuing obligation without notice for good cause.

XIII. Form, Place of Performance, Place of Jurisdiction, Applicable Law, Partial Invalidity

1. "Written" within the meaning of these Terms means text form (email, fax, or machine-generated letters), "written form" means a document signed by hand. Amendments or additions to these Terms, including this Section XIII.1 of the Terms as well as the termination or the consensual cancellation of a contract require written form. Other declarations or notifications are required to be written.
2. The place of performance for all liabilities of the contracting parties arising from the contract, including the obligation to remedy the defect and the reciprocal restitution obligations in the event of withdrawal, is Dradura's principal place of business.
3. The exclusive jurisdiction and venue for all disputes arising from or in connection with the delivery New Bern, North Carolina.
4. The legal relationships between us and the Contractor are subject to North Carolina law. The application of the *United Nations Convention on Contracts for the International Sale of Goods* (CISG) is excluded.
5. Should any provision of these Terms or the other agreements made be or become invalid, this shall not affect the validity of these Terms or the other agreements made. Instead of the invalid provision, the corresponding statutory provisions shall apply.