

# Standard Conditions of Purchase of Melcosa Vietnam Limited

## 1. Order Placement

**1.1** These standard conditions of purchase alone shall apply to any purchase of goods by Melcosa Vietnam Limited (Melcosa) from Supplier; any countervailing or different conditions shall have no validity unless MELCOSA has given its written assent to said conditions on an exceptional basis. Any different or additional terms and conditions in any order confirmation or other Supplier document are hereby expressly rejected.

**1.2** Any and all collateral agreements are, as a general rule, to be made in writing. Verbal agreements shall be binding only if confirmed in writing by at least one party without delay, but within 48 hours at latest. If a written agreement is modified retrospectively, the written confirmation is to make explicit reference thereto.

## 2. Protection of Fair Competition

**2.1** For the entire period during which the ordered goods are sold to the final customer, the Supplier is prohibited from supplying directly or indirectly to third parties any of the articles in the same form or a similar form or design that may cause confusion. Brand name articles that have not been specially produced for MELCOSA shall be excepted.

**2.2** All information made available to the Supplier by MELCOSA shall be treated confidentially as a trade secret by the Supplier and its officers, directors and/or employees. This includes drawings, samples and any other information regarding the characteristics of the ordered goods. Such information shall not be divulged in any manner to any third party without the written consent of MELCOSA, except to the extent that the divulgence of such information shall become necessary for the Supplier to perform its obligations under this agreement or in any litigations concerning the provisions of this agreement.

## 3. Quality Guarantee

**3.1** The articles ordered by MELCOSA must be supplied in a condition that fully corresponds to the samples, i.e. they must correspond to the description as well as those samples previously submitted and approved by MELCOSA in terms of their technical features, form, workmanship and design and they must exhibit the qualities as guaranteed. Furthermore those articles ordered by MELCOSA must be supplied in a condition that fully corresponds to the released material composition submitted and approved by MELCOSA in terms of their material/accessories composition. All the technical characteristics, workmanship and appearance of the samples and material composition approved and released by MELCOSA shall be construed as guarantees of workmanship.

**3.2** The Supplier is under obligation to perform a final inspection prior to delivery to MELCOSA. Any deviations from the samples approved by MELCOSA must be approved in writing by MELCOSA prior to delivery.

**3.3** Any claim by MELCOSA against the Supplier for breach of warranty becomes time-barred within three years after the expiration of the year in which MELCOSA became aware or without gross negligence would have become aware of the identity of the obligor and the circumstances which constitutes the claim. Longer statutory limitation periods shall not be affected.

## 4. Prices

The stipulated prices are deemed to include the packaging required by MELCOSA or for shipping. The prices agreed in the order shall be binding for the entire period during which the ordered goods are sold by MELCOSA. This shall also apply to any follow-on orders.

## 5. Packaging and Labeling

The labeling, packaging and shipping of the merchandise must comply in every way with the packaging and shipping instructions provided by MELCOSA. In the absence of specific instructions, the labeling, packaging and shipping of the merchandise shall be effected as required for shipment and with the due care and diligence of a prudent businessperson.

## **6. Period of Performance**

**6.1** All of our delivery dates are binding. The Supplier shall be obliged immediately to notify MELCOSA in writing should circumstances change or become apparent to him as a consequence of which the agreed delivery deadline is no longer tenable.

**6.2 (a)** Should the supplier be in default, MELCOSA shall be entitled to the statutory remedies. In particular, MELCOSA shall be entitled to demand compensation in lieu of performance and withdraw from the contract after having first given reasonable notice, to no avail. In such event, MELCOSA specifically has the right to make covering purchases and to charge the additional cost to the Supplier.

**(b)** In addition to the statutory remedies MELCOSA may demand from its Supplier the following penalties for late delivery as mutually agreed in the order:

For the first 10 days 2% of the total net order value  
For day 11 until 15 6% of the total net order value  
From day 16 and onwards 40% of the total net order value

**6.3** MELCOSA may accept merchandise delivered late by submitting a written declaration to such effect to the Supplier. Moreover, in this case, the rights to claim damages caused by delayed performance and due to defective or incomplete goods are reserved.

**6.4** The Supplier is not entitled to make performance of an initial order prior to the stipulated time.

**6.5** Payment obligations of the Supplier in conjunction with orders placed by MELCOSA are always due immediately.

## **7. Place of Performance and Transport**

If not agreed otherwise the Supplier is under obligation to deliver the merchandise which has been ordered at its own cost and its own risk to the warehouse designated by MELCOSA. However, should it be provided in the order or in a supplemental provision in the forwarding instructions or routing order that the merchandise is to be collected from the Supplier by MELCOSA authorized shipper at its own cost, then the risk shall pass at the proper delivery of the merchandise to its authorized shipper in accordance with the packaging and forwarding instructions.

## **8. Invoicing**

The Supplier shall submit its invoices in quadruplicate. The address of the recipient of the shipments must be designated in the invoice. In the event that the shipment has been delivered to several different recipients, individual invoices are to be issued. Original invoices must not accompany the shipments. Each invoice must show articles from only one purchasing division.

The invoices must contain the following information: supplier identification code (LKZ), order number, order date, a description of the goods, type of shipment, number of units (packages), delivery note number, MELCOSA article number(s), design, color, size and quantity, gross and net weight, Supplier's invoice and tax number, and any registration number required by law in the country of destination as specified in the relevant purchase order.

## **9. Non-Assignment**

Supplier may not delegate or assign any of its rights or obligations hereunder or relating to the subject matter hereof or any goods furnished to MELCOSA.

## **10. Payment**

**10.1** As a general rule, payment is to be effected in accordance with the terms cited in the order and, in every case, only after the receipt of the goods or, if cash against documents has been agreed, once the documents have been submitted to MELCOSA.

**10.2** The dispatch of means of payment or the submission of the payment order to the bank shall be relevant for determining compliance with the time limit for payment. Payment and discount periods shall not commence until both the merchandise has been received in the agreed warehouse and the invoice has been received by MELCOSA in its supplier trading division.

**10.3** For acceptance of goods under initial orders determination of the deadlines pursuant to Clause 10.2 shall commence on the agreed delivery date.

**10.4** In the event of late delivery the number of days late shall be added on to the start of the deadlines under Clause 10.2.

**10.5** MELCOSA has the right, but is under no obligation to offset claims against the Supplier with claims of the Supplier against MELCOSA.

**10.6** MELCOSA is entitled to pay invoices from Suppliers in the Federal Republic of Germany by means of a three-month bill of exchange that is free of expenses for the Supplier. This shall not affect the terms of payment.

**10.7** The payment of invoices shall be effected without prejudice to the subsequent exercise of rights. Specifically, the payment does not constitute the acknowledgement of an obligation to pay or of having ordered the merchandise, or confirmation that the merchandise is complete or free from defects.

## **11. Inter-company Offsetting**

In the event that MELCOSA does not have offsettable claims in an amount corresponding to the Suppliers counterclaims, MELCOSA has the right to offset against claims of other companies belonging to the Otto Group (especially baumarkt direkt GmbH & Co KG, bon prix Handelsgesellschaft mbH, Heinrich Heine GmbH, Josef Witt GmbH, Küche & Co GmbH, Otto (GmbH & Co KG), SCHWAB VERSAND GmbH, Sieh an! Handelsgesellschaft mbH, SportScheck GmbH) and any other affiliates of MELCOSA. Similarly, the above-cited companies and any other affiliates of MELCOSA are also entitled to offset claims of MELCOSA against the Supplier's claims.

## **12. Offset Prohibition / Prohibition of Right to Delay or / Right to Refuse Performance**

The Supplier is not permitted to offset claims or to delay or refuse performance on any grounds.

## **13. Duties of Inspections and Complaints**

**13.1** Independent of the final inspection to be performed by the Supplier pursuant to No. 3.2 herein, MELCOSA will conduct regular inspections of the goods in accordance with ISO 2859-1 (AQL sampling system). As regards the check to be performed by MELCOSA, the Supplier shall agree that only obvious defects are to be reported immediately; moreover, the notice of defect shall have been served within the correct period, if MELCOSA serves such notice within 14 days after discovering the defect.

**13.2** The Supplier is expressly notified of the requirement to obtain the assent of his liability insurer to the above contractual provision in order to maintain in force without restriction the existing insurance cover (German suppliers cf § 4 I 1 AHB).

**13.3** The Supplier shall, after consultation, grant MELCOSA access to his production plants for the articles on order as well as to those of his subcontractors, permit audits and disclose its subcontractors' names and addresses when so requested.

## **14. Compliance with statutory provisions**

**14.1** The Supplier shall comply with all applicable laws and regulations in the country of manufacture and the country of destination as specified in the relevant purchase order, including, without limitation, all laws and regulations regarding product safety. The Supplier hereby represents, warrants, and covenants that the sale and marketing of goods supplied to MELCOSA does not violate any laws or regulations in the country of sale. The supplier shall also abide by all applicable standards and obtain all applicable certifications (e.g., DIN, EN, ISO, UL, CSA), unless agreed otherwise.

**14.2** The Supplier shall also comply with all laws, regulations, ordinances, directives and standards applicable to future deliveries of articles without this requiring any specific mention.

**14.3** The Supplier shall ensure that laws, regulations, directives and ordinances are taken into consideration in good time before they come into force in order to ensure that his supplies of goods may be used or sold to MELCOSA without infringing laws, directives and ordinances that come into force only at a later date.

**14.4** At MELCOSA's request, the Supplier shall furnish evidence that all applicable requirements have been met prior to delivery of the goods.

**14.5** Where the Supplier is aware that the goods are intended for delivery to another country, the supplier shall also be required to comply with this country's regulations in accordance with the provisions of paragraph 2 and paragraph 3.

**14.6** The Supplier shall also undertake to adhere to the Otto Group Code of Conduct in its latest version, accessible online at [www.ottogroupb2b.com](http://www.ottogroupb2b.com) respectively the Vendor Portal.

**14.7** In addition to the above the Supplier shall be in compliance with customer specifications as MELCOSA will introduce to the Supplier in a separate letter.

## **15. Warranty**

**15.1** The Supplier is liable for defects in quality or title, i.e. if the delivered goods do not conform with the sample, the quality requirements, the packaging and forwarding instructions, the material labeling provisions, or the care symbols, in case of non-compliances with the obligations pursuant to no.14 herein, missing article inserts, missing article labels and all those effects which are listed in 3.1.

The Supplier shall also be responsible to MELCOSA in the event that any published declarations/claims made in the advertising or on the labels prove to be incomplete or incorrect. This shall also apply to any missing, incorrect or incomplete directions for assembly.

**15.2** MELCOSA's receipt of, or failure to reject, the goods shall not be construed as acceptance of the supplier's performance. In the event of any breach of warranty or any other failure by Supplier to comply with all requirements pursuant hereto or meet any obligations pursuant hereto or pursuant to applicable law, MELCOSA shall be entitled to all rights and remedies available hereunder and under applicable law and in equity. Without limiting the generality of the foregoing, MELCOSA may, in its discretion, demand the supply of goods free of defects, rectification (by the supplier), have the defect remedied by a third party or by MELCOSA at the supplier's expense, cancel the applicable purchase order, reduce the purchase price, seek cover, and recover damages.

**15.3** If the post-performance fails, MELCOSA shall be entitled, without any further serving of notice, to further reaching rights/claims to repudiation and compensation for damages caused in lieu of performance.

**15.4** The statute of limitation for warranty claims shall be 3 years from the date of delivery to MELCOSA. Longer statutory limitation periods shall not be affected.

**15.5** The statute of limitations will start again from the beginning for redeliveries of components or delivery of reworked components unless the Supplier has clearly acted on a goodwill basis.

**15.6** The return of defective goods to the Supplier shall not be construed as a request to supply replacements goods. The Supplier shall be obliged to accept all returns of defective goods and immediately reimburse the full invoice value plus MELCOSA's disbursements in particular any wasted inbound freight costs.

**15.7** In the event the Supplier should refuse to accept the goods, MELCOSA shall be free to use the goods after having served reasonable notice. After deduction of the costs so incurred, MELCOSA shall be obliged to turn the proceeds over to the Supplier.

**15.8** MELCOSA shall be further entitled to charge the supplier for the cost of all inspections of defective goods.

**15.9** Any costs incurred by MELCOSA as a result of a defective delivery, in particular transport, travel, labour or material costs or costs of a receiving inspection and any other consequential or incidental harm shall be borne by the Supplier and without limiting any other rights and remedies of MELCOSA under applicable law or in equity.

## **16. Covering purchase – Granting protected rights**

If MELCOSA – on whatever legal grounds – is entitled to claim compensation, instead of performance and to implement a covering purchase in order to assert a claim for the damages thus incurred, MELCOSA is entitled to make use of, and Supplier hereby grants MELCOSA a license to use and permit its affiliates and its and their alternative suppliers to use, any intellectual and industrial property rights of Supplier (such as copyright, patents, utility patents or registered designs, trademarks, licenses, claims based on competition law etc.) in connection with the design, manufacture and sale of cover goods. To this extent the Supplier waives any right to prohibit that he may be entitled to assert. MELCOSA expressly points out that this right is granted as part of the damage limitation obligation that the Supplier is required to observe. To the extent that any third party rights are violated by the exercise of such rights by MELCOSA, the Supplier (cf. No. 18 herein) is obliged to indemnify MELCOSA, its affiliates and its and their respective alternative suppliers from any and all third party claims.

## **17. Liability**

**17.1** Particularly as pertains to the provisions of the laws and regulations of the country of destination as specified in the relevant purchase order governing product safety, and within the scope of manufacturers' and product liability, the Supplier shall be fully liable for damages and consequential damages caused to the ultimate buyer. Upon request, the Supplier is under obligation to produce proof of compliance with the said legal requirements (certificate or seal of a testing agency) and, in the event of a prohibition order pursuant to the said provisions, must withdraw the article, notwithstanding the warranty period.

**17.2** In addition, the Supplier shall hold MELCOSA harmless as regards any and all claims based on the respective country's provisions and reimburse MELCOSA for any and all damages it has incurred in conjunction with said provisions (e.g. recall costs, loss of interest, attorneys' fees etc.) unless the relevant product defect has not been caused by the Supplier. Besides the Supplier shall reimburse any resulting costs incurred by MELCOSA due to the inspection of the goods, determination of defects, sorting, retrofitting, expenses for product recall, loss of interest, lawyer's fees etc. against corresponding documentation. Any further statutory claims of MELCOSA to damages shall not be affected.

**17.3** The Supplier shall undertake to take out insurance against the cost of a product recall as required by the relevant working procedures and to maintain same in force at its own expense for the duration of the limitation periods applicable to the goods supplied by it to MELCOSA.

## **18. Industrial Property Rights**

**18.1** The Supplier explicitly warrants that selling and marketing the merchandise does not violate any third-party rights (copyrights, patents, utility patents or registered designs, trademarks, licenses, claims based on competition law etc.) and does not contravene any regulations issued by statutory or administrative bodies. No duty of compensation shall exist if the Supplier is able to prove that he is not responsible for the legal violation.

**18.2** The Supplier is under obligation to hold MELCOSA and the companies associated with it harmless from any claims of third parties and to reimburse any damages beyond such claims, along with lost profits. The same shall apply in the event that the articles are offered and sold outside the country of destination unless the Supplier has drawn attention in the order confirmation to the fact that the goods he is offering are not to be sold in third countries.

**18.3** A claim by MELCOSA against the Supplier for breach of warranty becomes time-barred within three years after the expiration of the year in which MELCOSA became aware or without gross negligence would have become aware of the identity of the obligor and the circumstances which constitute the claim. Besides claims because of the defect of title shall be subject of limitation pursuant to section 15.4. and 15.5.

**18.4** Rights to drawings, samples and models that are given to the Supplier shall remain with MELCOSA and shall be treated confidentially. Such documentation is to be returned to MELCOSA with the final delivery. This shall also apply if a model has not been accepted.

**18.5** The Supplier is liable for any abuse of patents. During and subsequent to the term of the supply contract, the Supplier is prohibited from supplying articles bearing trademarks belonging to MELCOSA or its licensors to third parties without the prior written consent of MELCOSA.

**18.6** For each infringement of one of the supplier obligations listed in 18.1 and 18.4, MELCOSA shall be entitled to demand damages of EUR 10,000. The right to other more far reaching claims and entitlements shall remain in force.

**18.7** Longer statutory limitation periods shall not be affected by the above rules. Any claims against the Supplier shall be asserted by MELCOSA, where applicable also on behalf of affiliated companies.

## **19. Group Clause**

MELCOSA is entitled to supply the merchandise to associated companies. This shall not affect the liability of the Supplier in its relations with MELCOSA. MELCOSA shall also be entitled to supply consumers abroad and accordingly to advertise the goods abroad, for example by means of catalogues, mail shots, brochures, CD-ROMS, floppy disks, video, film, DVD, internet, TV on demand, SMS or other forms of telecommunication and non-physical transmission of images and text. The supplier's liability toward MELCOSA shall remain unaffected.

## **20. Criminal and anti-constitutional organizations**

The Supplier warrants that he shall not have any business or other contacts with terrorists, terrorist organizations or other criminal or anti-constitutional organizations. In particular the Supplier shall put in place organizational measures to ensure that EU Directive Nos. 2580/2001 and 881/2002 are implemented as part of his business operation.

## **21. Place of Jurisdiction and Choice of Law**

This agreement shall be governed by and construed in accordance with Hong Kong law. The UN Sales Convention (UNCITRAL, CISG) shall not apply.

Any dispute, controversy or claim arising out of or relating to this agreement, or the breach, termination or invalidity thereof, shall be settled by arbitration in Hong Kong under the Hong Kong International Arbitration Centre Administered Arbitration Rules in force when the Notice of Arbitration is submitted in accordance with these Rules.

The number of arbitrators shall be one.

The arbitration proceedings shall be conducted in English.

The Arbitral Tribunal shall use its best efforts to produce a final and binding award within six months of appointment. The parties shall use their best efforts to assist the Arbitral Tribunal in achieving this objective, and the parties agree that this six month period shall only be extended in exceptional circumstances, which are to be determined by the Arbitral Tribunal in its absolute discretion.