

## **General Terms and Conditions of Purchase of LAVAIR AG Klimatechnik**

### **§ 1**

#### **General remarks - Scope of application**

- (1) The terms and conditions of purchase of LAVAIR AG shall apply exclusively; any terms and conditions to the contrary or supplier conditions deviating from our conditions of purchase will not be recognised unless expressly agreed in writing as to their validity. The terms and conditions of purchase of LAVAIR AG shall also apply if we accept the supplier's delivery without reservation in the knowledge that the supplier's terms and conditions conflict with or deviate from those of LAVAIR AG.
- (2) The terms and conditions of purchase of LAVAIR AG shall only apply to companies in accordance with Art. 310 (1) German Civil Code (BGB).
- (3) The terms and conditions of purchase of LAVAIR AG shall also apply to all future transactions with suppliers.

### **§ 2**

#### **Offer - Offer documents**

- (1) The supplier shall be obliged to accept our order within a period of 2 weeks.
- (2) We retain the right of ownership and copyrights to illustrations, drawings, calculations and other documents; they may not be made accessible to third parties without our express written consent. They are exclusively for use in production on the basis of our order; after

completion of order, they must be returned to us without further request. The documents referred to are subject to confidentiality with regard to third parties; in this respect, the provision of Art. 9 (5) shall apply additionally.

### **§ 3**

#### **Prices - Terms of payment**

- (1) Price stated in orders shall be binding. In the absence of deviating written agreements, prices include delivery "free domicile", including packaging. Return of packaging shall be subject to special agreement.
- (2) Prices include statutory value added tax.
- (3) Invoices can only be processed, if they state the order number shown in our order in accordance with the specifications in our order. Any consequences as a result of non-compliance with this obligation shall be the supplier's responsibility unless he proves himself not responsible for non-compliance.
- (4) Unless agreed otherwise in writing, we shall pay the purchase price within 14 days, calculated from date of delivery and receipt of invoice, with 2% discount or net within 30 days upon receipt of invoice.
- (5) To the extent permitted by law, LAVAIR AG shall be entitled to rights of set-off and retention.

### **§ 4**

#### **Delivery period**

- (1) The delivery time stated in the order is binding.
- (2) The supplier is obliged to inform us immediately in writing if inconveniences occur or become apparent to him, indicating that delivery times cannot be met.
- (3) In the event of delays in delivery, LAVAIR AG shall be entitled to statutory claims. After an unsuccessful expiry of a reasonable period, our company shall be in particular entitled to claim damages instead of demanding performance and withdrawal. If LAVAIR

AG demand compensation, supplier shall have the right to prove to LAVAIR AG that he is not to be held responsible for breach of duty.

## **§ 5**

### **Transfer of risk – Documents**

- (1) Unless otherwise agreed in writing, delivery shall be free of charge.
- (2) Suppliers shall be obliged to exactly state the LAVAIR AG order number on all shipping documents and delivery notes; if customers fail to do so, delays in processing goods thus ordered shall not be attributable to LAVAIR AG.

## **§ 6**

### **Inspection of defects - Liability for defects**

- (1) LAVAIR AG are obliged to check the goods within a reasonable period of time for any deviations in terms of quality and quantity.
- (2) LAVAIR AG shall be entitled in full to statutory claims for defects. In any case, and at the discretion of LAVAIR AG, our company shall be entitled to demand from suppliers either removal of defects or replacement. The right to compensation, in particular the right to claim damages instead of performance, is expressly reserved.
- (3) In the event that suppliers are in default with their subsequent performance, LAVAIR AG shall be entitled to remedy the defect themselves at the suppliers' expense.
- (4) The limitation period shall be 36 months, calculated from the transfer of risk.  
Considering LAVAIR's rights of recourse within a supply chain (Arts. 445a, 445b, 478 BGB), we are entitled to demand that suppliers provide the type of subsequent performance LAVAIR AG owes to its customers in individual cases. This does not restrict our right to choose the type of subsequent performance. Before LAVAIR AG acknowledge or fulfil customer claims to remedy a defect, suppliers are usually granted the opportunity to comment on the facts of the case without, however, entering into a legal

obligation to do so. If the supplier does not make any statement within a reasonable period of time, fails to make a sufficiently plausible statement or denies the existence of a defect, and if LAVAIR AG are unable to reach an agreement with the supplier, the claim granted by LAVAIR AG on account of the defect shall be deemed to be owed to our customer; evidence to the contrary is possible and is the supplier's responsibility. For the rest, our company's rights of recourse shall also exist in cases in which LAVAIR AG or third parties have further processed the defective goods, in particular by installing them in another product.

(5) All other mandatory provisions concerning delivery recourse shall remain unaffected.

## **§ 7**

### **Product Liability - Exemption - Liability Insurance Cover**

- (1) Insofar as the supplier is responsible for a product damage, he is obliged to indemnify LAVAIR AG, on first demand, from claims for damages by third parties if the cause lies within his area of control and organisation, with him being liable himself in the external relationship.
- (2) Within the scope of his own liability for cases of damage within the meaning of subsection (1), the supplier is also obliged to reimburse any expenses pursuant to Arts. 683, 670 BGB or in accordance with Arts. 830, 840, 426 BGB, which arise from or in connection with recall actions lawfully carried out by LAVAIR AG. As far as possible and reasonable, the company will inform the supplier in good time of both content and scope of such recall measures, granting him the opportunity to comment.
- (3) In coordination with the supplier, LAVAIR AG will ensure all necessary information is passed to the relevant competent authority in accordance with provisions of German Product Safety Law (ProdSiG).
- (4) The supplier undertakes to take out a product liability insurance. The fixing of appropriate amounts of cover is subject to product and industry. Details should be examined in each case, taking the adequacy of the damage thus specified into account. If LAVAIR AG is entitled to further claims for damages, these shall remain unaffected.

## **§ 8**

### **Industrial property rights**

- (1) Suppliers warrant that no rights of third parties within the Federal Republic of Germany are violated in connection with their delivery.
- (2) If, for this reason, third party claims are made against LAVAIR AG, suppliers shall be obliged to indemnify LAVAIR AG from those claims upon first written request. In the event of claims for damages third parties, suppliers shall be entitled to prove they are not responsible for violating third party rights.
- (3) LAVAIR AG shall not be entitled to enter into a contract with a third party without supplier's consent to reach any agreements, in particular to conclude a settlement.
- (4) The supplier's obligation to indemnify shall refer to all expenses LAVAIR AG was obliged to incur from or in connection with the third party claim.
- (5) The period of limitation shall be 3 years, beginning with the transfer of risk.

## **§ 9**

### **Retention of Title - Provision of Materials - Tools - Confidentiality**

- (1) LAVAIR AG reserve the right of ownership insofar as our company provides parts to the supplier. Processing or alteration carried out by the supplier is performed for LAVAIR AG. If goods reserved by LAVAIR AG are processed with other items not pertaining to our company, LAVAIR AG shall acquire co-ownership of the new items in the ratio of our item's value (purchase price plus VAT) to the other processed items at the time of processing.
- (2) If items provided by LAVAIR AG are inseparably mixed with other items not belonging to our company, we shall acquire co-ownership of the new items in the ratio of the reserved items' value (purchase price plus VAT) to other mixed items at the time of mixing. If mixing is carried out in such way that suppliers' items are to be regarded as the main items, there shall be agreement to the effect that suppliers transfer proportionate co-

ownership to LAVAIR AG; suppliers shall keep sole ownership or co-ownership for LAVAIR AG.

- (3) LAVAIR AG reserves ownership of tools. Suppliers are further obliged to use the tools exclusively for the production of goods ordered by LAVAIR AG. At his own expense, a supplier shall be obliged to insure tools owned by LAVAIR AG at their new value and against damages brought about by fire, water and theft. At the same time, the supplier hereby assigns to LAVAIR AG all claims for compensation from this insurance; LAVAIR AG herewith accepts the assignment. The supplier is obliged to carry out any necessary maintenance and inspection work on LAVAIR AG tools as well as all maintenance and repair work at his own expense and in good time. He must notify LAVAIR AG immediately of any malfunctions; if a supplier culpably fails to do so, claims for damages shall remain unaffected.
- (4) Insofar as the security rights to which LAVAIR AG are entitled in accordance with subsection (1) and/or subsection (2) exceed the purchase price of all our reserved goods not yet paid for by more than 10%, LAVAIR AG shall be obliged, at the suppliers' request, to release security rights according to the choice of LAVAIR AG.
- (5) The supplier shall be obliged to keep all illustrations, drawings, calculations and other documents and information received strictly confidential. They may only be disclosed to third parties with the explicit consent of LAVAIR AG. The obligation of confidentiality shall also apply after execution of this contract. However, this obligation shall expire if and insofar as production knowledge contained in the illustrations, drawings, calculations and other documents provided has become generally known or was demonstrably already known to the supplier at the time of notification within the meaning of sentence 1.

## **§ 10**

### **Place of jurisdiction - Place of performance**

If the supplier is a merchant, the place of jurisdiction shall be the registered office of LAVAIR AG. The company, however, shall also be entitled to sue suppliers at the court of their place of residence.

Unless otherwise stated in the order and if the supplier is a merchant, the registered office of LAVAIR AG shall be the place of performance.

The law of the Federal Republic of Germany applies. The United Nations Convention on Contracts for the International Sale of Goods dtd. 11 April 1980 (CISG) does not apply.

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