

# General Terms and Conditions of Purchase of Molinari Rail AG

Version: May 2015

## § 1 Scope

(1) All orders and inquiries of Molinari Rail AG (hereinafter referred to as: "**Molinari**") shall be made exclusively on the basis of these General Terms and Conditions of Purchase. These General Terms shall apply therewith also for all future business transactions with the contract partner even if not again agreed upon expressly. In this context, the General Terms and Conditions of Molinari shall apply in their respectively current version. The contract partner's general terms and conditions shall not become a component part of the contract even if Molinari fails to expressly object thereto; they shall also not gain validity if Molinari - also with knowledge of the terms and conditions of the contract partner - without further reservation takes delivery of the goods supplied or service or - in the event that an acceptance is to occur - accepts such or makes payment.

(2) Insofar as reference is made to the Incoterms, these shall apply in the current version respectively published by the International Chamber of Commerce (ICC).

## § 2 Offers/Cost Estimates of the Contract Partner

Offers and cost estimates of the contract partner shall be provided to Molinari at no charge and shall be binding for the contract partner. In its cost estimate offer, the contract partner shall adhere strictly to the inquiry and shall explicitly notify Molinari of any deviations, e.g. with regard to the quantity or quality of the goods to be delivered.

## § 3 Orders/Delivery Call-Offs

(1) Orders shall only be binding for Molinari according to the following regulations if they are made in writing. Verbal agreements and agreements made by telephone, ancillary agreements or amendments shall only be binding upon written confirmation by Molinari. This shall apply also for additionally agreed deliveries or services. Molinari's silence regarding proposals, demands, etc. of the contract partner shall by no means be deemed to be agreement by Molinari to the proposal made by the contract partner.

(2) Every order by Molinari which the contract partner wishes to accept is to be confirmed by the contract partner in writing. Molinari shall be entitled to freely revoke orders up until receipt of the respective contract confirmation by Molinari. With verbal agreements or agreements made by telephone, the written order by Molinari shall be deemed to be a commercial letter of confirmation.

(3) A contract confirmation which deviates from Molinari's order shall not be recognized by Molinari even in the case that Molinari fails to object thereto in writing. The taking of delivery or acceptance of delivery of goods supplied or services by Molinari shall not be deemed to be confirmation of a deviating contract confirmation of the contract partner.

(4) Molinari can demand amendments of the delivery item or the content of the service as well as also the date of the delivery or service from the contract partner also after execution of the contract insofar as such can be reasonably expected of the contract partner - taking into reasonable account the reciprocal interests of the parties.

(5) If it is clear to the contract partner, due to its expert knowledge, that an order is incomplete or the purpose pursued with the order by Molinari with the delivery item or service cannot be achieved, it shall inform Molinari hereof in writing immediately and comprehensively.

## § 4 Delivery/Service Dates

(1) The delivery/service dates and dates or periods stated by Molinari in the order are binding. Should Molinari not have stated any delivery/service dates in the order, then the delivery/service dates or periods named by the contract partner are agreed with binding effect. Insofar as not otherwise expressly agreed in writing, receipt of the goods at the place of use/unloading or - in the case that an acceptance must occur - the date of successful acceptance or, otherwise, the date of performance of the service shall apply for determination of whether the agreed dates or periods have been complied with. Insofar as not otherwise agreed in writing, the periods shall start on the day of receipt of the order confirmation or, at the latest, after clarification of all details necessary for the performance of the delivery or service.

(2) The contract partner shall only be entitled to make installment deliveries and partial services after written agreement by Molinari. The acceptance of additional deliveries or services or - in the case that an acceptance is to occur, their acceptance - shall be at the sole free discretion of Molinari.

(3) Should the contract partner recognize that the agreed dates cannot be met, it shall notify Molinari in writing hereof without undue delay with a statement of the reasons and the duration of the delay. The obligation of the contract partner to make timely delivery or service remains unaffected herefrom. Should the contract partner culpably fail to comply with this notification obligation and Molinari incurs damage hereby, Molinari shall be entitled to claim damages.

(4) The taking of delivery of the delayed delivery or service or - in the case that an acceptance must occur, the acceptance thereof - by Molinari shall not constitute any waiver of claims or rights.

(5) Should the agreed dates not be met due to a circumstance for which the contract partner is responsible, Molinari shall be entitled to demand payment from the contract partner, in addition to performance, as a minimum amount, of a contract penalty in the amount of 0.5% of the respective net contract value per work day commenced of the delay, but in total however a maximum amount of 5% of the respective net contract value. The right to claim additional damages beyond this amount remains unaffected hereby; the contract penalty shall be taken into account with calculation of a possible damage claim due to default. If Molinari accepts the late delivery or service, it must claim the contract penalty at the latest with the final payment. In addition, in the case of default for which the contract partner is responsible after expiration of a reasonable subsequently fixed date set by Molinari, Molinari shall be entitled, at its choice, to demand reimbursement of damages instead of performance or to procure performance by a third party at the cost of the contract partner and/or to rescind the contract. In cases of repeated default of delivery, Molinari shall be entitled, after prior written warning notice, to rescind the contract as a whole with immediate effect also with regard to orders not yet

performed by the contract partner at this date.

(6) If the contract partner is unable to meet the agreed deadline or the agreed date as a result of force majeure (e.g. natural catastrophe, unrest, war, fire, flooding) or as a result of another interruption which is unforeseeable and unavoidable for it, the time period for the delivery/service shall be extended by the time period of the disruption. This shall not apply in the case of a fixed date transaction. The contract partner can only rely on the afore-mentioned reasons if it informs Molinari without undue delay regarding the hindrance and the foreseeable duration thereof. If the disruption is not only for a temporary period and the taking of delivery or acceptance of the delivery or service as a consequence of the delay cannot be reasonably expected of Molinari, Molinari is entitled to rescind the contract with regard to the not-yet performed part of the contract. In the case of a partial performance, Molinari shall be entitled to rescind the contract as a whole in the event that Molinari has no interest in the partial performance.

(7) Otherwise, with regard to the liability of the contract partner for delays, the statutory regulations shall apply.

(8) With premature delivery or service, Molinari can refuse to take delivery or service or - in the case that an acceptance must occur - accept such at the cost and risk of the contract partner. If Molinari takes delivery of the supplied goods or service or - in the case that an acceptance must occur - accepts such, the contract partner shall reimburse Molinari any additional costs resulting herefrom (e.g. storage costs, insurance costs).

## § 5 Prices, Deliveries/Shipment, Packaging, Acceptance, Transfer of Risk and Ownership

(1) The agreed prices for deliveries or services are fixed prices; costs for packaging, freight and transport to the shipping address or place of use/unloading point stipulated by Molinari are included in these prices. Insofar as Molinari shall bear the transport costs in accordance with the contractual agreement, the most favorable transport possibility for Molinari is to be selected for the delivery. Otherwise, the contract partner is bound by the cost estimate made prior to the conclusion of the contract. Any additional costs shall be borne by it.

(2) Insofar as not otherwise agreed in writing, all deliveries shall be made DDP named place of destination (Incoterms 2010). The shipment documents/delivery notes are to be attached to every delivery and should show the respective order number, article number and delivery quantity.

(3) In the case that an acceptance should occur, Molinari can refuse acceptance if the performance is defective. The contract partner can then first demand acceptance by Molinari in this case if it has proved the remedy of the defect. The risk of accidental loss or the deterioration shall first be transferred to Molinari upon acceptance by Molinari.

(4) If a time period for a necessary cooperation of Molinari is determined or can be determined according to the calendar, Molinari shall only be in default of acceptance if the contract partner has previously expressly offered its service performance.

## § 6 Warranty and Liability

(1) Warranty and liability shall be determined according to the statutory regulations insofar as not otherwise regulated according to these General Terms and Conditions or another written agreement between Molinari and the contract partner. As clarification: the liability of the contract partner according to other regulations of these General Terms and Conditions of Purchase - e.g. according to § 8, para. 1/6 and § 9, para. 4 - remains unaffected by the regulations of this § 6.

(2) The contract partner shall assure that all items delivered by it and all services performed by it correspond to the specifications and norms stipulated in the order and/or in attached documentation and comply with the pertinent legal and respectively applicable regulations (in particular but not limited to the respectively applicable requirements of technical safety, work, health, accident, environment and fire protection) and the regulations and directives of public authorities and professional associations as well as conform with the prescribed functions and specifications. This shall apply accordingly also for the observance of all technical data and quality standards stipulated by Molinari in the orders, drawings and/or delivery regulations through which the required quality of the performance to be provided by the contract partner are stipulated. Should deviations from these provisions be necessary in the individual case, the contract partner must obtain the written approval of Molinari hereto in advance. The warranty obligation of the contract partner shall not be affected by this approval. If the contract partner has concerns regarding the type of performance desired by Molinari, it shall notify Molinari in writing hereof without undue delay. This shall apply also for any proposals for improvement or change of the contract partner with regard to the delivery or service desired by Molinari.

If Molinari has granted approval of a first sample for a certain product, the contract partner shall warrant that each of the products of this type delivered by it shall conform completely to the sample approved by Molinari. Insofar as Molinari has not made any other agreements with the contract partner concerning the required quality of the products or the service to be performed by it, the product details of the contract partner (e.g. in catalogs) or its details regarding the service to be performed by it shall otherwise apply as being agreed as the minimum specifications. Independent thereof, the contract partner bears the responsibility that the delivery item or the service to be performed by it is suitable for the use required according to the contract.

(3) Insofar as no other consequence results from the content of the contractual relationship under the law of obligations, the contract partner assumes the procurement risk with regard to the necessary items to be delivered by it or for the production of the owed service.

(4) Molinari shall first be obligated to examine the delivered goods and to object to defects after delivery in full and only with regard to any deviations in the identity and quantity as well as transport damage which is externally visible. Otherwise, Molinari is obligated to undertake technical function examinations and other examinations only in the form of random samples if this is appropriate with regard to the delivery item within the framework of the ordinary course of business. Insofar as thereafter an obligation to object exists in the individual case, the objection shall be deemed to be made in a timely manner if it is received by the contract partner within 14 work days after delivery of the goods with apparent defects or within 14 work days after a hidden defect was recognized or recognizable upon due examination. Should Molinari enter into separate deviating agreements with the contract partner, for instance, within the framework of a quality control agreement, the regulations made therein shall take precedence.

(5) The contract partner shall respond without undue delay to objections of defects and complaints and state its initial position within 48 hours. Upon demand by Molinari, the contract partner shall provide Molinari with the results of an error analysis undertaken by it. Should the contract partner fail to meet such a request within a reasonable time period, Molinari shall be entitled to undertake its own error analysis or to have such undertaken at the cost of the contract partner.

(6) The contract partner shall remedy defects of the delivery or service objected to during the warranty period including also the non-fulfillment of guaranteed data and the absence of warranted quality or agreed condition, upon demand, without undue delay and at no charge including all ancillary costs (e.g. transport, labor, installation and disassembly costs) at the choice of Molinari by new delivery of the defective products or by re-performance of the service or by remedying the defect. Returns of defective goods to the contract partner shall be undertaken at its cost and risk. Additional statutory claims remain unaffected.

(7) Should the contract partner culpably fail to meet its warranty obligation within a reasonable time period fixed by Molinari, Molinari can take the necessary measures itself or have such undertaken by third parties at the cost and risk of the contract partner - notwithstanding the warranty obligation of the contract partner. In urgent cases, after coordination with the contract partner, Molinari can undertake the remedy itself or have such undertaken by a third party at the cost of the contract partner. Minor defects can be eliminated by Molinari itself in the interest of a timely performance vis-à-vis its own customers without prior agreement and without the warranty obligation of the contract partner being affected hereby. The same shall apply if unusually high damage is threatened.

(8) The warranty period is 36 months insofar as no other time period has otherwise been agreed upon by Molinari with the contract partner in writing or the law foresees a longer warranty period for the product to be provided by the contract partner or the service to be provided by it. The warranty period shall begin at the earliest upon the transfer of the goods to Molinari or the third party named by Molinari at the place of receipt or use/unloading point stipulated by Molinari. Insofar as an acceptance is necessary, the warranty period shall start upon the acceptance date named by Molinari in the declaration of acceptance. The warranty periods shall be extended by the time period in which the defective delivery item or the defective service cannot be used as intended due to the defect. In the case of subsequent performance, the original warranty period for the exchanged or newly delivered parts or for the newly produced service shall start anew.

(9) Acknowledgement of receipt of the delivery item or taking of delivery or acceptance shall not release the contract partner from its warranty obligations also in the case of knowledge on the part of Molinari of a defect. The same shall apply respectively for acceptance of service performances.

(10) Approval by Molinari of drawings submitted by the contract partner as well as Molinari's approval of samples transferred by the contract partner shall not release the contract partner from its warranty obligations.

(11) Insofar as a claim is made against Molinari by third parties due to a defect or a product error obligating replacement of the item delivered by the contract partner, the contract partner shall indemnify and hold Molinari harmless against all claims resulting herefrom and provide active support to Molinari with the defense of such claims.

(12) Without the express written agreement of Molinari, the contract partner is not authorized to modify the delivery item or service after conclusion of the contract or during the delivery or service period. This shall apply also for the most minor of changes and also in the case that the specifications, measurements, analyses, formulas, manufacturing procedures, etc. stipulated in detail by Molinari remain unchanged. Modifications to the product to be delivered by the contract partner or the service to be performed by the contract partner shall be permissible first after the written declaration of approval by Molinari. Should the contract partner culpably fail to fulfill this obligation, it shall pay all costs resulting from this breach of obligation to Molinari or third parties, e.g. due to subsequent examinations, expert opinions, additional calculations, subsequent treatments, replacement deliveries, etc.

(13) Should the contract partner intend, for future deliveries, to introduce modifications to the manufacturing process, the composition or the characteristics of the delivery items, place of manufacture, suppliers of materials or preliminary products as well as the procedure or the installations for the examination of the delivery items or other modifications which are relevant for the use of the delivery item by Molinari or its customers, the contract partner shall inform Molinari hereof in a timely manner in writing but at least three months in advance, if applicable, also sooner insofar as longer notification periods result respectively from the industrial standards or quality standards or Molinari has agreed respectively with the contract partner.

(14) The contract partner shall insure itself against all risks from product liability in a reasonable amount and provide Molinari with proof of insurance upon demand.

## **§ 7 Invoices and Payments**

(1) Invoicing shall occur at the earliest as of the date of the delivery of the product including all documents relevant to the contract or - in the case that an acceptance must occur - at the date of acceptance of the delivery or service, otherwise as of the date of the performance of the service. Invoices are to be sent by mail, upon demand by Molinari alternatively in electronic form; they may not be attached to the goods.

(2) Insofar as not otherwise agreed, payment shall be made at Molinari's choice within 60 days net without deduction or within 14 days with 3 % discount insofar as Molinari has no objections to the delivery/service. For calculation of the due date, the applicable date starting the deadline is the date of receipt of the proper invoice as well as all necessary documents (e.g. certificate on materials testing) by Molinari. For determination of the timeliness of payment, the undertaking of the payment transaction shall apply. Payment delays due to invoicing of the contract partner which does not comply with the stipulations of this § 7 shall be borne by the contract partner.

(3) Even insofar as Molinari should have had knowledge at the date of payment that the delivered goods or the performed service is defective, the payment of the invoice shall not be deemed to be a waiver of Molinari's claims due to the defective nature of the goods or service.

(4) Molinari is entitled to set-off claims of the contract partner also against claims of affiliated companies of Molinari. The contract partner can only carry out a set-off against its own claims if and insofar as its counterclaims are determined with final, res judicata effect, are undisputed or recognized by Molinari. The contract partner shall also only be authorized to exercise a right of retention insofar as its counterclaim is based on the same contractual relationship and is due.

(5) In cases of default of payment, Molinari shall owe default interest in the amount of 5 percent.

(6) The contract partner is not authorized to assign its claims against Molinari or third parties or to have such collected by third parties without the prior written consent of Molinari which Molinari shall not inequitably refuse.

(7) In cases of advance payments, Molinari shall be entitled to demand reasonable securities.

## **§ 8 Materials Supplied; Tools Provided and Other Production Materials**

(1) The contract partner shall examine the materials supplied by Molinari without undue delay after delivery thereof by Molinari or its supplier and, if a defect exists, shall notify Molinari hereof without undue delay. Should such a defect be subsequently discovered, the notifications must be made without undue delay after discovery. Should the contract partner fail to comply with these obligations, the contract partner shall be liable to reimburse Molinari all damage resulting therefrom (e.g. due to the loss of warranty claims against the supplier). In addition, the contract partner shall be responsible to Molinari upon the breach of the afore-mentioned examination and objection obligations for errors of the product delivered by it to Molinari or the service produced by it even insofar as this error is caused by defects in the materials supplied by Molinari.

(2) The contract partner shall mark the materials supplied by Molinari as being owned by Molinari and shall store such separately from other products so that the materials supplied by Molinari can be unequivocally identified as such for the entire duration of the storage and - insofar as technically possible and reasonable for the contract partner - also during the processing procedure. The contract partner shall be liable to Molinari for the loss of or damage to the materials supplied. It shall insure the materials supplied by Molinari at least for the market value against damage caused by fire, water, theft and comparable cases of damage at its own cost. Molinari shall be notified without undue delay of a legal or factual interference of the materials supplied by Molinari.

(3) The materials supplied by Molinari shall be modified and processed by order of Molinari and shall remain the property owned by Molinari during the modification and processing stage. The parties agree that Molinari shall be co-owner in the product produced with use of the materials or parts supplied by Molinari in the proportional relationship of the value of materials or parts delivered to the value of the complete product. The same shall apply if the ownership of Molinari should be lost through commingling or combining.

(4) Tools and other production materials which are provided to the contract partner by Molinari for the manufacture of goods to be delivered to Molinari remain the property owned by Molinari. Insofar as the contract partner manufactures or procures tools or other production materials which are specially necessary for the production of the parts to be delivered to Molinari, in whole or in part, at the cost of Molinari, possession and ownership title to these shall pass to Molinari upon payment by Molinari. It is agreed in this context that the contract partner possesses the tools and production materials for Molinari on loan. The contract partner shall not be entitled to a right of retention hereto. The tools and other production materials owned by Molinari are to be marked in an appropriate manner and clearly visibly as being the property owned by Molinari. The contract partner shall insure these at the purchase value against damage caused by fire, water, theft and comparable cases of damage at its own cost. The contract partner assigns already now all reimbursement claims from this insurance to Molinari; Molinari accepts the assignment herewith. Molinari shall be notified without undue delay of a legal or factual interference of the materials supplied by Molinari or other production materials.

(5) The contract partner is obligated to use the tools and other production materials named in § 8, para. 4 hereof exclusively for the manufacture of the goods ordered by Molinari. They may be scrapped or made accessible to third parties only after prior written consent of Molinari. In addition, these tools and other production materials are to be handled with due care and carefully stored. The care and maintenance of these tools and other production materials shall be determined according to the agreements made respectively hereto.

(6) Insofar as Molinari incurs damage as a result of a breach by the contract partner of the afore-mentioned obligations, the contract partner shall be obligated to reimburse such except in the case that the contract partner is not responsible for the breach of obligation.

## **§ 9 Drawings/Documents, Intellectual Property Rights; Rights to Work Results**

(1) All documents, drawings, samples, calculations, etc. which are transferred by Molinari to the contract partner in order to make an offer or the manufacture of the goods to be delivered or to perform the service remain the property owned by Molinari; the copyright of Molinari as well as all intellectual property rights existing therein are reserved. The contract partner is not authorized to use the information, ideas or other know-how contained therein for purposes other than purposes of preparation of the offer or performance of the contract for Molinari, in particular, to offer products to third parties manufactured for Molinari on the basis of this information. The latter case shall only not apply if the information, ideas or other know-how were already known to the contract partner prior to receipt from Molinari or it received this at a later time legally by other means. The documents, drawings, samples, etc. are to be handed over to Molinari upon demand - if no contract comes into existence or after the ending of the contract, without demand - without undue delay together with all copies and reproductions. The contract partner shall not be entitled to a right of retention. Sentences 1 and 2 hereof shall apply respectively for the drawings and other documents prepared by the contract partner according to the specific information provided by Molinari.

(2) The contract partner shall treat the documents designated in para. 1 hereof as well as all other information received in connection with the order or the performance of the contract – also after the ending of the contract – as a business secret and, accordingly, as being confidential. Such shall only be made known to third parties with the prior written consent of Molinari. Within its own business operation, the contract partner shall limit the transfer of confidential information to such employees and in such a scope as this is necessary to perform the agreed delivery or service and the respective responsibility of the employee in this connection. The contract partner agrees to impose the same confidentiality obligation on all employees to whom it transfers confidential information. Documents and information which Molinari receives in connection with the order and the performance of the contract from the contract partner shall be treated by Molinari as a business secret insofar as Molinari is expressly notified of the confidentiality requirements. The confidentiality obligation shall be cancelled insofar as the content of the documents concerns facts which are publicly known or which become subsequently public - without such being based on a breach of the confidentiality obligation by the party so obliged.

(3) The contract partner agrees to provide all drawings and documents which Molinari or its customers require for the installation, operation, maintenance, servicing and repairs of the goods delivered in a timely manner and without demand therefor – at the latest, upon delivery – in German and English, at no charge.

(4) Insofar as Molinari incurs damage as a result of a breach by the contract partner of the afore-mentioned obligations of this § 9, the contract partner shall be obligated to reimburse such except in the case that the contract partner is not responsible for the breach of obligation.

(5) Insofar as not otherwise expressly agreed in writing, Molinari shall have exclusive rights of use in connection with the delivery or service in all documentation, data, diagrams, etc. In particular, Molinari shall be entitled to ownership of all documents, etc. delivered by the contract partner or prepared in connection with the performance of the service. Molinari shall receive a right of use, exploitation and processing which is exclusive, irrevocable, unlimited with regard to time, territory and content and which is transferrable and capable of being sub-licensed to these as well as other work results and unprotected knowledge accruing from the cooperation. This includes in particular the right to reproduction, dissemination, exhibition as well as the right to reproduction via video or audio carrier and the right of processing and modification.

(6) Should already existing intellectual property rights or unprotected knowledge (know-how) of the contract partner be used in the framework of the performance of the service, Molinari shall in any case receive a non-exclusive right of use in the intellectual property rights as well as in the unprotected knowledge (know-how).

(7) The contract partner shall notify Molinari without undue delay regarding all inventions or other results capable of protection which occur in connection with the services performed for Molinari and provide it with all necessary information. All inventions are to be transferred to Molinari. Should Molinari not wish to file an application for an invention, it shall transfer the invention back to the contract partner. Molinari shall retain a simple unlimited right of use to such rights at no charge.

(8) The contract partner assures that the items delivered by it are free from rights of third parties and that no patents or other intellectual property rights of third parties within Switzerland as well as the European Union are infringed by their delivery or use in accordance with the contract also in connection or in cooperation with other items.

(9) Should intellectual property rights of third parties be infringed by the delivery or the services of the contract partner, the contract partner shall be obligated first of all to assure, by taking action to procure the rights or by modification of the delivery item or by delivery of a modified delivery item – insofar as reasonable for Molinari – that the infringement of rights no longer exists.

(10) Notwithstanding para. 9 hereof, the contract partner shall be obligated to hold Molinari harmless against claims of third parties due to infringement of patents or other intellectual property rights as well as expenditures accruing in connection with the claim and to bear all costs which accrue to Molinari herefrom. This obligation shall not exist insofar as Molinari makes agreements with the third party without the consent of the contract partner which refer to its claims, in particular, concludes a settlement or the contract partner is not responsible for the intellectual property right infringement. The contract partner shall provide Molinari with all information and documents necessary for a defense without undue delay and at no cost.

(11) The afore-mentioned regulations shall apply respectively also for those countries which, at the date of the conclusion of the contract, the contract partner has knowledge that the delivery items of Molinari shall be delivered.

## § 10 Security of Supply

(1) Insofar as the delivery items are goods developed specifically for Molinari, in particular, Molinari has participated directly or indirectly in the costs for development and/or production material, the contract partner agrees to supply Molinari with the delivery items within the framework of Molinari's requirements and to accept orders from Molinari as long as Molinari requires the delivery items. The foreseeable delivery volume according to Molinari's forecasts of customer requirements shall be made known to the contract partner in good time. A claim of the contract partner for purchase of certain quantities shall not exist however unless Molinari and the contract partner have expressly otherwise agreed.

(2) The contract partner agrees to guarantee the delivery of the necessary spare parts up to the expiration of 15 years after delivery of the delivery item – also after the cessation of the series production of the delivery item. If, within this period, the contract partner is able to recognize that it shall no longer be possible to provide such, it shall notify Molinari without undue delay of the end of the possibility of supply and, insofar as the contract partner cannot offer any other possibility to Molinari which is reasonable for Molinari, shall grant Molinari the possibility of procuring an all-time requirement 12 months prior to discontinuation of production.

## § 11 Quality Assurance and Controls

(1) The contract partner shall have suitable quality control management in terms of type and scope and shall prove such to Molinari upon demand. The contract partner shall keep regular records regarding the quality controls conducted by it and make these available at short notice to Molinari upon demand. The voluntary or involuntary loss and/or surrender of a certification which existed and was valid as of the order date is to be immediately notified to Molinari up to the date of complete performance of the contract.

(2) If the performance of a special quality control is foreseen for the delivery item within the framework of the acceptance, absent an agreement stating otherwise, the personal acceptance costs shall be borne by Molinari and the material acceptance costs shall be borne by the contract partner.

(3) After prior agreement with the contract partner, Molinari shall be entitled to undertake quality audits within the business operations of the contract partner – insofar as not otherwise agreed - at its own cost.

## § 12 Proof of Origin and VAT Law, Export Restrictions

(1) The contract partner shall provide Molinari with all necessary proof of origin at the latest upon delivery together with all details necessary in this respect in a signed form at its own cost. The same shall apply for proof pursuant to VAT law necessary in the individual case with deliveries abroad and intra-Community deliveries.

(2) The contract partner shall inform Molinari without undue delay if a delivery is subject to export restrictions, in whole or in part, according to an applicable law. Insofar as the grant of an export approval is necessary for the delivery to Molinari, the contract partner shall be responsible for obtaining such.

## § 13 Confidentiality

(1) The contract parties shall treat all information, knowledge and documents transferred or made accessible in connection with this contract by the respective other contract party, whether oral, in writing, electronic or any other form (hereinafter referred to as the "Confidential Information") as being strictly confidential. Included hereto is, in particular, all business, commercial, financial information as well as all information of a scientific, technical or industrial nature.

(2) The contract parties agree to only disclose Confidential Information to their own engaged employees or employees working with companies affiliated with them which require such to fulfill their respective obligations and who in turn are themselves obligated to confidentiality in accordance with the specifications of this § 13. Disclosure of the Confidential Information to other third parties as well as the use of the Confidential Information for a purpose other than the performance of the respective contractual obligations shall prerequisite the prior written consent of the respective other party.

(3) Excepted from the confidentiality obligation is such Confidential Information which is or shall be known to the other party by publicly accessible sources, which is notified to it by third parties without infringement of a confidentiality obligation as well as such Confidential Information which must be disclosed on the basis of statutory obligation or legally valid public authority order or legally valid court decision.

(4) Upon the demand of a party, the other party shall return all Confidential Information transferred to it without undue delay. It may not retain any copies insofar as such is permissible according to laws of the profession. Electronic copies in this case are to be destroyed, insofar as this is technically possible.

(5) The confidentiality obligation agreed upon herein shall end 3 (three) years after fulfillment of all obligations of a contract relationship coming into effect according to these terms and conditions. Should no contract come into existence, the time period shall end 3 (three) years after the ending of the discussions carried out between the parties.

## § 14 General Terms

(1) Insofar as these General Terms and Conditions of Purchase for Deliveries and Services determine that declarations of intent or notifications shall be made in writing, the written form shall also be met by use of text form, i.e. by telefax or by e-mail.

(2) If the contract partner is not in a position to meet its obligations in a timely manner, discontinues to make its payments or an insolvency proceeding is opened related to the assets of the contract partner, Molinari shall be entitled to rescind the part of the contract which has not yet been performed by the contract partner. This right of rescission is to be exercised within a deadline of one month after complete receipt of knowledge by Molinari of the afore-mentioned circumstances.

(3) The partial or complete transfer of deliveries or services by the contract partner to sub-contractors shall not be permissible without the prior written approval of Molinari.

(4) Swiss law shall apply to these General Terms and Conditions and the entire legal relationships between Molinari and the contract partner to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

(5) Exclusive jurisdiction is the business seat of Molinari in Winterthur. Mandatory provisions of the federal law are reserved.

(6) Place of performance for all contractual obligations is the business seat of Molinari in Winterthur or the respectively named shipment address or place of use/unloading point by Molinari.

(7) The personal data of the contract partner shall be stored and processed in an automated data file for the duration of the business relationship including the contract negotiation and execution phase. Molinari hereby informs the contract partner hereof.

(8) Should a provision in these General Terms and Conditions or a provision within the framework of any other agreements be or become invalid or unenforceable, the legal validity of all remaining provisions or agreements shall not be affected thereby. The invalid or unenforceable provision shall be replaced by such a valid provision which comes closest to the commercial intent of the contract at the time of the execution of the contract. The same shall apply in the case of a contract gap.