

TAIYO EUROPE GMBH - PURCHASE ORDER - GENERAL TERMS AND CONDITIONS

THIS PURCHASE ORDER IS GIVEN AND ACCEPTED SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS. NO TERMS ADDITIONAL TO, OR DIFFERENT FROM, THESE TERMS AND CONDITIONS SHALL BE BINDING ON BUYER UNLESS AND UNTIL EXPRESSLY ACCEPTED BY BUYER IN WRITING.

1. OFFER AND ACCEPTANCE. This Purchase Order includes these General Terms and Conditions and all specifications attached by Buyer hereto or expressly incorporated by Buyer herein by reference. Seller's acceptance of this Purchase Order or delivery or provision of "Products" as defined herein shall constitute acceptance by Seller of each and every term and condition herein. Buyer reserves the right to revoke this Purchase Order at any time prior to Seller's acceptance hereof.

2. DEFINITIONS. The term "Buyer" as used herein means Taiyo Europe GmbH. The term "Seller" as used herein means a natural or legal person whose name appears on the face of this Purchase Order, to whom this Purchase Order is issued. The term "Product" as used herein means (a) materials, components, supplies, diagrams, equipments, data and other articles or property and/or (b) services, as the case may be, which are to be delivered under this Purchase Order and includes design, installation, inspection, and testing as specified herein or as required to supply or furnish same.

3. DOCUMENTATION. All order confirmations, invoices, shipping documents, labels, receipts and related correspondence and documentation referring to this Purchase Order shall carry Buyer's Purchase Order number. Seller's order confirmations and invoices shall clearly specify all applicable national, state or municipal sales and use, excise or transportation taxes relating to the Product, and shall certify that the Product was produced and supplied in accordance with all applicable national, state and local statutes, administrative rules and regulations as per the Purchase Order specifications.

4. DELIVERY; TRANSPORTATION; RISK OF LOSS. Delivery of the Product shall be on the term set forth on the face of this Purchase Order, which will be in accordance with INCOTERMS 2020 or the latest revision thereof, and at the lowest cost form of transportation as commercially reasonable, unless otherwise specified by Buyer in this Purchase Order. Seller shall be liable for any difference in transportation charges between shipment as made and shipment as requested by Buyer in this Purchase Order, and such difference may be deducted by Buyer from payment to Seller. Title to, and risk of loss of, the Product shall remain with Seller until receipt by Buyer.

5. INSPECTION; PAYMENT. Buyer shall have the right to inspect the Product following Buyer's receipt thereof and, at Buyer's option, prior to receipt thereof at Seller's premises. Buyer's payment for the Product shall not be deemed to constitute acceptance thereof nor shall such payment be deemed to constitute a waiver by Buyer of any right to reject the Product or revoke acceptance thereof or a waiver by Buyer of any warranty of Seller, express or implied.

6. TIME FOR PERFORMANCE. Seller's performance under this Purchase Order by delivery of the Product at the date or dates specified therefor is a material term hereof and time is of the essence. In the event that Buyer does not receive the Product (or installment thereof, as applicable) on or before the date specified herein for delivery, Buyer shall have, in addition to all other remedies provided by law, the right to hold Seller liable, and under such circumstances Seller shall be liable, for damages for any additional costs incurred by Buyer which are in any way attributable to Seller's failure to deliver the Product on the due date, or alternatively, Buyer shall have the right to cancel this Purchase Order in its entirety, without liability to Buyer. Buyer, at its option, may accept delivery of the Product (or installment thereof, as applicable) on a date or dates different from those specified for delivery herein without waiver of any rights by Buyer as to prior or subsequent deliveries of the Product.

7. WARRANTY; REMEDIES. In so far as Seller provides for the standard terms of warranty for the Product, such warranty shall apply unless otherwise specified on the face of this Purchase Order. Otherwise, Seller warrants that the Product shall conform in all respects to the terms, conditions and specifications of this Purchase Order, that all designations or markings appearing on the Product relating to the weight, measurement, ingredients or quality of the Product shall represent the true net weight, measurement, ingredients or quality thereof, that the Product shall be merchantable, fit for its intended use and free from defects in materials and workmanship and that the Product shall be produced and supplied in accordance with all applicable national, state and local statutes, administrative rules and regulations. In the event the Product does not so conform or is defective and Buyer notifies Seller accordingly, Seller shall promptly remedy the same at Seller's sole cost and expense, by repair, modification, replacement, or full refund, at Buyer's option, and Buyer shall have all other remedies provided by law.

8. REPAIR BY BUYER. Buyer may, without waiver of any other right of Buyer hereunder repair, alter or modify, at Seller's cost, Product which is not in conformity with the terms, conditions and specifications of this Purchase Order.

9. INDEMNIFICATION OF BUYER. Seller shall be liable to Buyer for, and shall defend, hold Buyer harmless and indemnify Buyer from and against, any and all suits, actions, proceedings, claims, liabilities, judgments, damages, interest, attorneys' fees, expenses and costs whatsoever, no matter when the same may arise or be sustained, whether relating to injury to person or property or any other loss, which are or are claimed to be in any manner caused, contributed to or occasioned by reason of the default or breach of any term or condition of this Purchase Order by Seller or Seller's agent, or by the performance or failure to perform hereunder by Seller or Seller's agent, or by the negligence, whether active or passive, or intentional act of Seller or Seller's agent.

10. CHANGES; CANCELLATIONS. Buyer shall have the right on reasonable written notice to Seller to change the quantity, scope, specifications, time of performance or other content of this Purchase Order. Seller shall notify Buyer in writing immediately in the event that Seller desires to adjust Seller's quote price for the Product or delivery thereof as set forth in this Purchase Order due to any such requested change. Buyer shall not, under any circumstances, be obligated by such adjustment to pay more than the price stated in this Purchase Order (or the price derived by application of Article 15 hereof, as applicable) for all Product previously delivered to Seller, plus Seller's actual cost with respect to the uncompleted portion of the Purchase Order.

11. TITLE; PATENTS; COPYRIGHTS. Seller warrants that it has good and transferable title to the Product, free from any claim of any third party. Seller further warrants that neither the Product nor the sale or use thereof infringes or will infringe any German or foreign patent or copyright and Seller shall defend and hold Buyer harmless from and against all costs, expenses, including attorneys' fees, and damages or loss occasioned by any alleged infringement of any patent or copyright, whether by reason of the sale or use of the Product or because the same is enjoined. In the event the Product is asserted by Seller to be protected by one or more patents owned or controlled by Seller and suit is instituted to declare any such patent or its claims invalid or so limited in scope as to impair the Product's commercial protection, in addition to all other remedies provided to Buyer herein, Buyer shall have the right to cancel this Purchase Order without obligation or liability.

12. DRAWINGS; TOOLS; INSURANCE. All drawings, prints, molds, templates, dies, patterns, tools, specifications, blueprints, prototypes and similar items furnished by Buyer to Seller in connection with this Purchase Order shall remain Buyer's property and shall be returned to Buyer, at Buyer's request, in the same condition as originally received by Seller, reasonable wear and tear excepted. Seller shall utilize such items solely for the benefit of Buyer and shall not reveal or disclose any of such items to any third party to the extent same may be Buyer's proprietary property. Seller shall keep all such items insured while in Seller's custody, at no less than the replacement cost thereof, which insurance shall name Buyer as loss payee.

13. FORCE MAJEURE; DEFERMENT OF DELIVERY. In the event of fire, flood, strike or similar labor disturbances, action of national, state or local governmental authority or subdivision, accident, war, pandemic or any other cause whatsoever beyond the reasonable control of Buyer which prevents or materially interferes with Buyer's acceptance or use of the Product, Buyer may, without obligation or liability to Seller, cancel this Purchase Order in whole or in part or defer or adjust delivery of the Product.

14. QUANTITIES; COUNT. Seller's delivery of Product in excess of five percent (5%) of the quantity that provided for in this Purchase Order shall not obligate Buyer to purchase any such excess. Excess quantities of Product may be returned to Seller and Seller shall reimburse Buyer for any costs or expenses including all transportation charges incurred by Buyer with respect thereto. Buyer's count of the Product shall be conclusive.

15. PRICES; DISCOUNT. Seller shall provide the Product at prices no higher than as specified on the face of this Purchase Order, which prices Seller warrants to be no greater than Seller's price to similar Buyers for the same or similar quantities of the Product. In the event that no prices is so specified, the price for the Product shall be the lowest of (a) Seller's then quoted price for similar quantities of the Product to purchasers similar to Buyer; or (b) the then prevailing market price for the Product at the date for delivery by Seller; or (c) Seller's last quoted price to Buyer for the Product. Buyer shall not pay any charges whatsoever except as specifically set forth on this Purchase Order, whether for packing, loading, packaging or any other service or material.

16. PAYMENT. Buyer shall have the right to set off against sums becoming due under this Purchase Order any amount payable by Seller to Buyer in accordance with the terms of this Purchase Order or any damage due and payable by Seller to Buyer as a result of any failure on its part to comply with the terms of this Purchase Order. Payment terms are 14 days with 3% discount or 30 days net unless explicitly stated otherwise.

17. CONFIDENTIALITY. Any document, drawing, technical data or information of Buyer forwarded or communicated to the Seller for the performance of this Purchase Order is confidential and shall not be used for any purpose other than the performance of this Purchase Order without a prior written consent of Buyer. More generally, the Seller undertakes to keep confidential any information forwarded to him or to which it has been aware directly or indirectly, within the context of the order, until such information becomes generally known to the public.

For the purpose of this confidentiality obligation, the Seller undertakes to disclose the above-mentioned confidential information only to those of its employees or subcontractors who have a need to know such information for the performance of the order, and provided such persons have been duly informed of the strictly confidential nature of such information. The Seller shall cause any and all of its employees and/or subcontractors to abide by the provisions set forth in this Article 17.

18. COMPLIANCE WITH APPLICABLE LAW. Seller shall comply in the performance of the Purchase Order with each and every provision of applicable national, state or local law, rule or regulation, as amended or superseded, relating but not limited to such matters as employment, environment, hygiene, health, safety and working conditions, each such provision being deemed by this reference to be expressly incorporated herein.

19. NON-WAIVER. Neither Buyer's exercise nor Buyer's failure to exercise any right or remedy granted or provided by this Purchase Order or Buyer's acceptance of or payment for the Product shall be construed to be a waiver of any right or remedy Buyer may have for Seller's then existing or subsequent default, breach or compliance hereunder.

20. SUBCONTRACT. This Purchase Order may not be subcontracted by Seller in whole or in part without the prior written consent of Buyer, and any such attempted assignment shall be null and void.

21. GOVERNING LAW. This Purchase Order and Seller's acceptance hereof shall be governed by the laws of Germany.

22. ENTIRE AGREEMENT. This Purchase Order constitutes the sole and entire agreement between Buyer and Seller relating to the subject matter hereof and all prior or contemporaneous understanding or agreements, oral or written are merged herein. No subsequent changes or modifications to this Purchase Order shall be binding upon Buyer unless expressly accepted by Buyer in writing. Seller expressly waives all provisions contained in correspondence, forms or other writings related to the sale of the Product covered by this Purchase Order which negate, limit, extend or otherwise conflict with the provisions hereof. These Terms & Conditions shall take precedence over all other stated or not stated Terms and Conditions.

Taiyo Europe GmbH Purchase Order - General Terms and Conditions October 2020

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Sumitomo Mitsui Banking Corporation

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Mizuho Bank, Ltd.

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