



## General Terms and Conditions of Purchase of CABKA North America, Inc.

### 1. Scope of Application

- 1.1 These General Terms and Conditions of Purchase apply to all contracts of the CABKA North America, Inc. (hereinafter referred to as "CABKA") with its suppliers. CABKA reserves the right to introduce Special Terms and Conditions of Purchase for individual goods as well as for specific services, which contain additions and deviations to these General Terms and Conditions. The following ranking of the contractual components shall apply: Individual agreements executed by CABKA take precedence over the General Terms and Conditions of Purchase and any Special Terms and Conditions of Purchase, and any Special Terms and Conditions of Purchase take precedence over the General Terms and Conditions of Purchase. If several goods and services are ordered in one order for which different Special Terms and Conditions of Purchase have been introduced, the relevant Special Terms and Conditions of Purchase for the respective goods or services shall apply.
- 1.2 The General Terms and Conditions of Purchase and the Special Terms and Conditions of Purchase of CABKA shall apply exclusively. In particular, deviating or supplementary terms and conditions of the supplier are only recognized and shall apply if and only insofar as CABKA has expressly agreed to their validity in writing. The unconditional acceptance of deliveries, their payment or other silence with regard to deviating terms and conditions of sale of the supplier shall not be considered as acceptance of supplier terms and conditions by CABKA, even if CABKA is aware of them.
- 1.3 The General Terms and Conditions of Purchase and the Special Terms and Conditions of Purchase of CABKA are valid in current business relations and also for future orders, unless other arrangements have been made explicitly and in writing.

### 2. Purchase Order

- 2.1 CABKA sends a purchase order to the supplier for the delivery of movable goods (hereinafter referred to as "Order") at the discretion of CABKA by letter, fax and/or e-mail. The mere acceptance of unsolicited offers or samples does not trigger an order.
- 2.2 The supplier is obligated to confirm the Order within a period of five (5) working days after receipt by letter, fax and/or e-mail ("Order Confirmation"). Decisive for the timely confirmation of the Order is its receipt by CABKA. A delayed acceptance is considered as a new offer and requires the acceptance by CABKA. Price and delivery time shall be stated in the Order, unless CABKA agrees in writing to any changes in the Order Confirmation.
- 2.3 The Order shall be deemed to be binding upon confirmation of the Order, unless otherwise stipulated below. The supplier shall point out obvious errors (e.g. typing and calculation errors) and incompleteness of the Order including the order documents for the purpose of correction or completion before the Order Confirmation; otherwise the contract shall be deemed not to have been concluded.
- 2.4 If the Order Confirmation deviates completely or partly from the contents of the Order and/or goes beyond it, this is considered as a new offer of the supplier and requires the express written acceptance by CABKA.

- 2.5 If there is a permanent business relationship between the parties to the contract, the Order shall be deemed accepted even if the supplier does not object to the Order in writing within two (2) weeks.
- 2.6 The supplier shall bear the procurement risk for its goods and services.
- 2.7 In all documents the purchasing department, complete Order number, Order date and Order identification from the Order of CABKA must be indicated.
- 2.8 The supplier must accept all changes regarding the Order, technical specifications, delivery conditions (deadlines, delivery locations) reasonably requested by CABKA. In these cases CABKA will issue a new Order. The provisions in paragraph 2.2 apply.

### 3. Prices and Terms of Payment

- 3.1 The price stated in the Order is binding. Unless otherwise agreed in individual cases, the price shall include all taxes and other charges such as shipping and delivery charges, duties, customs, tariffs, imposts, and government-imposed surcharges.
- Unless otherwise agreed in individual cases, the price shall include all services and ancillary services of the supplier as well as all ancillary costs (e.g. proper packaging, transport costs free place of delivery including any transport and liability insurance).
- 3.2 Payment shall be made after receipt of the invoice and receipt of goods (if applicable acceptance) within 30 days net, unless otherwise agreed in individual cases.
- The supplier sends the original invoices, which meet all legal requirements, to CABKA at the address of CABKA indicated in the Order.
- The invoice must contain the Order number and all invoiced items with quantities, unit prices and taxes. The term "final invoice" (or similar) is only used for the invoice that represents the conclusion of the Order.
- If the supplier is expressly responsible for transport, these costs will be invoiced separately on the basis of the receipts (if these costs are not already included in the Order). Each granted discount period begins on the day on which CABKA receives the final invoice which fulfills the above-mentioned requirements. In the case of cross-border deliveries, the supplier is also obligated to provide CABKA with corresponding invoices and customs documents at no additional cost.
- 3.3 For the timeliness of a payment owed by CABKA (in case of bank transfer) the value date of the account credit at the supplier's bank is decisive.
- 3.4 CABKA shall not be liable for any payment default unless it has failed to pay an undisputed invoice within 30 days following receipt of written notice from the supplier that the payment was not made by the due date. Under no event shall CABKA be liable for any late charge or interest.
- 3.5 CABKA is entitled to rights of set-off and retention as well as the defense of non-performance of the contract to the maximum extent permitted by law. CABKA is in particular entitled to withhold payment as long as it is still entitled to

claims from incomplete or defective performances against the supplier.

3.6 Payments made by CABKA do not constitute acceptance, acknowledgement of contractual performance, the absence of defects in the goods or the services rendered, or proper invoicing.

3.7 The supplier shall only have a right of set-off or retention on the basis of counterclaims that have been legally determined by a court of competent jurisdiction or are undisputed by CABKA.

#### 4. Import and Export Regulations

4.1 Imported goods must be delivered customs paid by the supplier, unless otherwise agreed in individual cases.

4.2 The supplier shall also be obligated to provide, at its own expense, any declarations and information required for import, to permit inspections by the customs authorities and to provide any necessary official confirmations.

#### 5. Delivery Time

5.1 The delivery time stated by CABKA in the Order is binding. Early deliveries are only possible only with the written consent of CABKA.

5.2 The supplier is obligated to inform CABKA immediately by fax, e-mail and/or letter, stating the reasons and the expected duration of any delay in performance. CABKA shall have the right to require that appropriate measures be taken to expedite the Order(s) in question.

5.3 If the supplier does not provide goods or perform its service within the agreed delivery time, CABKA shall have all rights available under applicable law. Without limiting the generality of the foregoing, CABKA may cancel the Order and demand compensation for damages.

5.4 If CABKA and the supplier have agreed upon a fixed delivery date by individual contract and the supplier does not provide goods or perform its service within the agreed delivery time or is in default, CABKA may cancel the Order and demand compensation for damages.

5.5 If the supplier fails to provide goods or perform its service within the agreed delivery time, CABKA may require the supplier to pay CABKA liquidated damages 0.3% of the net price per day late, but in total not more than 5% of the net price of the delayed delivered goods or services. The supplier agrees that these liquidated damages are a reasonable estimate of damages that would be difficult to calculate and are not a penalty. CABKA reserves the right to prove that higher damages have been incurred.

5.6 The contractual remedies available pursuant to paragraph 5.5 apply without prejudice to other rights of CABKA.

#### 6. Delivery, Acceptance and Transfer of risk

6.1 The delivery will be made to the place indicated in the Order.

6.2 Even if shipment has been agreed upon, the risk does not transfer to CABKA until the goods have been handed over at the agreed place of destination. If in addition to the delivery a work performance was agreed upon, this requires acceptance. In this case the risk does not transfer to CABKA until acceptance by CABKA. The date of acceptance is to be agreed separately with CABKA.

6.3 The delivery shall be accompanied by a delivery bill stating the date (issue and dispatch), the contents of the delivery (item number and quantity) and the Order information (date and number). If the delivery bill is missing or incomplete, CABKA is not responsible for resulting delays in processing and payment; in particular, the payment periods mentioned in paragraph 3.2 are extended by the period of the delay.

6.4 Separate from the delivery bill, CABKA shall be sent a corresponding dispatch note with the same content to the e-mail address or fax number stated in the Order.

6.5 Items to be delivered shall be properly packed by the supplier at its own expense, in particular in accordance with the nature of the goods and ensuring their completeness until delivery and shall be adequately insured against transport damage. The supplier must take back packing material at its own expense upon request of CABKA.

6.6 The supplier is not entitled to make partial deliveries without CABKA's prior written consent.

6.7 The additional costs resulting from delivery to a place other than the agreed place of delivery shall be borne by the supplier.

6.8 If the goods are collected directly from the supplier or from a supplier commissioned by the supplier, they must be in the same condition as in the case of shipment to CABKA. If the condition of the goods is defective at the time of collection or if the goods are not transportable, the supplier is obligated, at the discretion of CABKA, to (i) replace the goods without delay and make them available to CABKA or (ii) to refund the money or (iii) to deliver the goods in perfect condition to an address of CABKA.

#### 7. Title

Title to the ordered goods transfer to CABKA upon receipt. Any extended or expanded reservation of title by the supplier is excluded.

#### 8. Assignment, Subcontractor

8.1 The supplier is not entitled to assign its claims arising from the contractual relationship to third parties. This shall not apply insofar for monetary claims. CABKA is entitled to transfer all rights and obligations arising from the contractual relationship to companies affiliated with CABKA.

8.2 The supplier may not subcontract the contractual performance unless CABKA has given its consent in writing in advance.

#### 9. Confidentiality, Handling of Documents

9.1 CABKA reserves all property rights and industrial property rights for illustrations, plans, drawings, calculations, execution instructions, product descriptions and other documents of CABKA made accessible to the supplier. Such documents are to be used exclusively for the contractual performance and are to be returned to CABKA after completion of the order unless otherwise agreed.

9.2 The supplier assures to treat as confidential all information and documents which its, its employees and consultants (in written, oral, electronic or other ways) have obtained from CABKA and which are either marked as confidential or for which it is reasonable recognizable due to the nature of the information/documents or due to the applicable circumstances are confidential. Without limiting the generality of the foregoing, the supplier agrees not to make

such information or documents accessible to third parties without the prior written consent of CABKA, to protect them from the access of third parties by suitable technical measures, and to use them only for the purpose of the execution of the Order. This also applies to any time after completion of the Order. Any copies made by the supplier are to be destroyed in this case; the only exceptions to this are storage within the framework of legal storage obligations and the temporary storage of data for backup purposes within the framework of the usual data backup. The confidentiality obligation shall only expire if and to the extent that the knowledge contained in the documents provided has become generally known.

- 9.3 The supplier shall be obliged to inform all persons involved in the agreed performance about the aforementioned confidentiality obligation before disclosing any confidential information to them and to bind these persons to the confidentiality agreement. The present confidentiality obligation shall thus also apply to all employees and/or consultants of the supplier. The supplier is liable for any violation of this agreement by its employees and/or consultants.

## 10. Retention of Title by CABKA

Tools, devices and models which CABKA makes available to the supplier or which are manufactured for contractual purposes and are invoiced separately to CABKA by the supplier remain the property of CABKA or become the property of CABKA. They are to be marked by the supplier as the property of CABKA, to be carefully stored, insured against damages of any kind (at the supplier's own expense) and to be used only for the purposes of the Order. The supplier's costs for the permanent maintenance and repair of these objects are settled with the remuneration on the first calculation of the manufacture/acquisition. The supplier will immediately notify CABKA of all damage to these objects and - except in emergencies - wait for the written consent of CABKA before repairing or technically modifying them. The supplier is obligated upon request to return these objects in proper condition to CABKA if they are no longer required by it for the fulfillment of the contracts concluded with CABKA.

## 11. Liability for Defects and Warranty

- 11.1 For the rights of CABKA in the case of material defects and defects of title of the goods (including wrong, short and excess delivery as well as improper assembly, faulty assembly, operating or instruction manual) and in the case of other breaches of duty by the supplier, CABKA is entitled to enforce any or all remedies available under law at its discretion and at the supplier's expense.
- 11.2 The supplier is responsible for ensuring that the goods have the agreed upon quality (including any applicable specifications to which the parties have agreed) at the time of the transfer of title to CABKA. Any product descriptions which are referenced in the Order are considered an agreement on quality. It is irrelevant whether the product description originates from CABKA, the supplier or the manufacturer.
- 11.3 The Supplier shall in particular ensure that the goods provided comply with the acknowledged rules of technology and the contractually agreed characteristics; it shall comply with the relevant binding technical as well as safety, occupational health and safety, accident prevention and other regulations and standards (e.g. CE, ISO, VDI, VDE and DIN). Relevant certificates, test reports and proofs are to be presented to CABKA free of charge on request.

- 11.4 CABKA is entitled to claims for defects even if the defect remained unknown to CABKA due to gross negligence when the order was placed.
- 11.5 The costs incurred by the supplier for the purpose of inspection and rectification of defects shall be borne by the supplier even if it turns out that no defect actually existed.
- 11.6 If the supplier does not meet its obligation for subsequent performance - at the discretion of CABKA - by remedy of the defect or by delivery of a defect-free item within a reasonable period of time set by CABKA, CABKA may remedy the defect itself and demand from the supplier reimbursement of the necessary expenses or a corresponding advance payment.
- 11.7 In addition, CABKA is entitled to reduce the purchase price or to cancel the Order in case of a defect of quality or title. In addition, CABKA is entitled to a compensation for damages and expenses according to the legal regulations.
- 11.8 CABKA or a third party designated by CABKA has a right of presence during the replacement work carried out by the supplier.
- 11.9 CABKA is entitled - during normal working hours, accompanied by a third person appointed by CABKA - to carry out inspection visits to the premises where the contractually agreed order is carried out by the supplier, in order to ensure the proper fulfillment of the contractually agreed services. CABKA will inform the supplier at least three (3) days before the planned inspection visit. The controls carried out by CABKA do not release the supplier from its liability, in particular liability for defects, and do not lead to a contractual acceptance of the goods or services.

## 12. Supplier Liability

- 12.1 If a damage is caused by the defect of a product, the supplier shall indemnify CABKA from claims of third parties.
- 12.2 Within the scope of its indemnification obligation the supplier shall reimburse CABKA for expenses of CABKA, which result from or in connection with a claim by third parties including recall actions carried out by CABKA. CABKA will inform the supplier - as far as possible and reasonable - about the content and extent of recall measures and give it the opportunity to comment. Further legal claims remain unaffected.
- 12.3 The supplier is obligated to take out and maintain business liability insurance with product liability coverage with worldwide validity for indirect export, including environmental liability insurance with a lump-sum coverage of at least \$10,000,000 for personal injury and property damage and at least \$1,000,000 for financial losses per insured event, and to provide CABKA with proof of the insurance contract and ongoing premium payment upon its request.  
The supplier undertakes to keep the insurance policy in force as long as the obligation from the Order exists. The supplier must inform CABKA immediately of any change in its insurance coverage. In this case a new insurance confirmation must be issued.
- 12.4 Items lent or rented to the supplier by CABKA shall be insured by the supplier.
- ## 13. Obligations to Examine
- 13.1 An inspection of incoming goods shall only be carried out by CABKA with regard to externally recognizable damage and externally recognizable deviations of identity and quantity.

CABKA or a party determined by CABKA will promptly give notice of such defects after their discovery.

13.2 CABKA or a party determined by CABKA reserves the right to carry out a more extensive inspection of incoming goods.

13.3 In addition, CABKA or a party determined by CABKA will give notice of defects as soon as these are determined according to the circumstances of the proper course of business. In this respect the supplier waives any objection based on delayed notice of defects.

#### 14. Force Majeure, Liability

The contracting parties shall be released from their mutual obligations to perform for the duration of a disturbance caused by force majeure or industrial disputes and to the extent of their effect. The supplier must inform CABKA immediately about the existence of force majeure. It is obligated to undertake everything reasonable in order to perform as soon as possible after the end of the force majeure. If the interruption due to force majeure lasts longer than one (1) month, CABKA is entitled to cancel the Order.

#### 15. Termination

CABKA has the right to cancel terminate any Order if the supplier fails to comply with its contractual obligations within 15 days of receipt of written notice of such failure.

#### 16. Limitation Period

16.1 CABKA's right to seek compensation for damages shall survive until the expiration of the applicable statute of limitations, unless otherwise provided below.

16.2 The general limitation period for warranty claims is three (3) years from the date of transfer of title. If acceptance has been agreed, the limitation period shall commence upon acceptance. The three-year period of limitation applies accordingly also to claims arising from defects of title. Furthermore, claims arising from defects of title do not become time-barred under any circumstances as long as the third party can still assert the right - in particular in the absence of limitation - against CABKA.

16.3 Upon receipt of the notification of defects (by letter, fax and/or e-mail) by the supplier, the limitation of warranty claims shall be suspended. In case of replacement delivery and removal of defects the warranty period for replaced and repaired parts starts new.

#### 17. Severability Clause

Should one or more provisions in these General Terms and Conditions of Purchase, the Special Terms and Conditions of Purchase, or other agreements between CABKA and the supplier be or become ineffective or impracticable, the effectiveness of all other provisions and agreements is not affected. In such case, CABKA and the supplier shall undertake to implement an amendment to effectuate, insofar as is possible, the parties' original intent.

#### 18. Place of Jurisdiction, Applicable Law, Supplier Guidelines

18.1 The validity, interpretation and performance of these General Terms and Conditions of Purchase and any dispute connected herewith shall be governed and construed in accordance with the laws of the State of Missouri without regard to conflicts or choice of law principles. The Convention for the International Sale of Goods shall not

apply to the sale and purchase of goods hereunder. The contract language is English.

18.2 The supplier agrees that CABKA will store and process personal data that serves the purpose of the fulfillment of the contract, and that it will not receive a notification of this in individual cases.

18.3 The exclusive place of jurisdiction for all disputes arising from legal relationships between CABKA and the supplier is the state and federal courts located in Missouri.

18.4 In all other respects reference is made to the current Supplier Guideline of the Cabka Group GmbH, the provisions of which apply additionally to the supplier. The guideline is available under <https://cabka.com/de/de/m/supplier-guideline/>.

18.5 The parties shall endeavor to settle all disputes arising from the contract amicably.

18.6 Any side agreement or amendment to these General Terms and Conditions must be made in writing.