

## General Terms and Conditions of Purchase (GTCP) of M-Industries of the Migros Group

(February 2018)

### 1. VALIDITY OF GENERAL TERMS AND CONDITIONS OF PURCHASE

**1.1 Scope:** These General Terms and Conditions of Purchase (GTCP) apply to all supply relationships between the SUPPLIER and one or more M-INDUSTRIES which the SUPPLIER supplies, with seat in Switzerland, as currently listed under [www.mindustry.com](http://www.mindustry.com), and below individually referred to as M-INDUSTRY.

**1.2 Amendments:** The SUPPLIER will be immediately informed of any amendments to the GTCP. Unless the SUPPLIER does not raise a valid written objection within 30 calendar days of notification of the amendments, the amendments shall be deemed to have been accepted and shall come into force.

**1.3 Non-validity of GTCP of SUPPLIER:** General Terms and Conditions or other documents of the SUPPLIER which replace, modify or supplement the present GTCP will not have any legal effects, even if reference is made to these in any business correspondence.

### 2. OFFER

The offer of the SUPPLIER will be provided at no charge.

### 3. SOCIAL STANDARD (AMFORI - BSCI)

The SUPPLIER undertakes to comply with the amfori-BSCI Code of Conduct ([www.amfori.org](http://www.amfori.org)). Furthermore, the SUPPLIER will ensure that the amfori-BSCI code of conduct is passed along the whole supply chain and likewise adhered to by UPSTREAM SUPPLIERS.

### 4. QUALITY OF GOODS

**4.1 Agreed quality:** The SUPPLIER warrants that the goods are of the agreed quality, in accordance with the product specifications respectively the reference samples.

**4.2 Modifications to the product:** Modifications to the material composition, execution, etc. are strictly prohibited, unless M-INDUSTRY has given its prior written agreement.

**4.3 Legal conformity/state of the art:** The SUPPLIER is responsible for ensuring that the goods comply with the provisions of the law, and do not contravene any legal law, including in particular those of the EU. In addition, all products must correspond to the current state of the art.

**4.4 Inspections:** M-INDUSTRY has the right, subject to advance notice, to carry out inspections at the premises of the SUPPLIER and/or its UPSTREAM SUPPLIERS in respect of quality and observance of agreed deadlines. Such inspection procedures do not release the SUPPLIER from his obligations.

### 5. PRICE

**5.1 Price:** The price covers all services that are necessary for the proper fulfilment of the contract. These are in particular all services in accordance with the agreed terms of supply (e.g. ICC Incoterms 2010), packaging, labelling as well as expenses, licence fees and all public charges. It is understood that prices are exclusive of statutory value-added tax.

**5.2 Due date:** Payment shall be made within 30 calendar days of receipt of the correctly issued invoice, subject to existing material or legal warranty claims, but at the earliest 30 calendar days after acceptance of goods free of defect. Payments for partial deliveries will only be made if this has been agreed in writing.

### 6. MATERIAL WARRANTY

**6.1 Liability for defects:** The SUPPLIER is liable for damages resulting from defective goods. Any deviation from the usually expected quality as well as from relevant patterns, samples, warranties or standards for the packaging, etc. is deemed to be a defect. Costs or damages caused by defective or inappropriate packaging and/or by incorrect addressing are charged to the SUPPLIER.

**6.2 Period for notice of defects/Time limits for legal claims:** M-INDUSTRY may give notice of all defects up to the expiry of the use-by-date and where no such date exists for a period of up to six months from the expiry of the guarantee period granted to the end customer. The same period applies to the time limits for legal claims. M-INDUSTRY is not bound by any review and/or notification periods respectively time limit periods imposed by the law or the SUPPLIER. The SUPPLIER waives the defence whereby the goods are deemed to have been approved if such notice is not given immediately after discovery.

**6.3 Right of option:** If there is a defect, M-INDUSTRY has the right to demand rescission, reduction, rectification of the defects or replacement delivery for the defective goods. Even if only individual parts of a delivery are defective, M-INDUSTRY may also demand the rescission or the replacement delivery for the entire delivery.

**6.4 Return of defective goods at the expense of the SUPPLIER:** If M-INDUSTRY decides on rescission or replacement delivery, the goods will be returned at the expense and risk of the SUPPLIER respectively made available during a reasonable period for collection at the M-INDUSTRY. Goods not collected within the period stipulated or perishable goods may be destroyed at the expense of the SUPPLIER.

**6.5 Replacement purchase from third parties:** If the replacement delivery by the SUPPLIER does not take place immediately or within the period of time stipulated by M-INDUSTRY, M-INDUSTRY has the right to purchase the equivalent delivery from third parties, without setting any further time limit, at the expense of the SUPPLIER.

**6.6 Waiver of future deliveries:** If defects are found in an individual delivery respectively in an individual call-off of goods, M-INDUSTRY is entitled, in

addition to the right of rescission, reduction, rectification of defects or replacement delivery, to waive deliveries of the same goods still outstanding and/or to withdraw from the contract with immediate effect without liability for damages.

**6.7 Liability:** The SUPPLIER is liable to M-INDUSTRY for all direct and indirect damages suffered by M-INDUSTRY respectively its contract partners in connection with the delivery of defective goods, rectification of defects, rescission or replacement delivery. The SUPPLIER is obliged to take out third-party liability insurance with adequate risk cover. A copy of the corresponding insurance documentation must be submitted to M-INDUSTRY if so requested.

**6.8 Debit advice:** If M-INDUSTRY suffers damage as the result of a defect, a debit advice will be issued and sent to the SUPPLIER. It will be deemed to have been accepted unless the SUPPLIER raises an objection in writing within two weeks stating his reasons.

## 7. LEGAL WARRANTY

**7.1 Third-party rights:** The SUPPLIER warrants that the goods do not contravene any third-party rights, in particular rights of a contractual, material and intellectual property protected nature.

**7.2 Consequences of an infringement of rights:** If M-INDUSTRY establishes that all or part of the goods infringe the rights of any third party, it may withdraw from the whole contract and/or return those goods already purchased against full reimbursement. The SUPPLIER is obliged to bear all costs relating to any direct and indirect damages incurred in this connection.

**7.3 Support in/assumption of responsibility for a legal dispute:** If M-INDUSTRY becomes involved in a legal dispute with third parties, the SUPPLIER will be informed and will from that point be obliged to give his unreserved support to M-INDUSTRY or its contract partners in conducting the legal dispute, or if so requested by M-INDUSTRY to assume responsibility for any legal proceedings, as well as all negotiations for the settlement of the legal dispute in or out of court. If the SUPPLIER fails to meet his obligations, M-INDUSTRY is entitled to recognise the right of the third party in good faith, or to submit itself to arbitration and to request reimbursement of the damage incurred (in particular the costs of the legal dispute and compensation payments to third parties) from the SUPPLIER.

## 8. EUR EXCHANGE PALLETS & DISPOSABLE PACKAGING

Delivery to M-INDUSTRY is effected according to its instructions either on factory-new Euro pallets compliant with IPPC Standard ISPM15, or on as-new EUR exchange pallets compliant with UIC Standard 435-2. The SUPPLIER has the opportunity to join the Migros Exchange Equipment Management (MTM, [www.tauschgeraete.ch](http://www.tauschgeraete.ch)). The SUPPLIER undertakes to take back his disposable packaging free of charge if requested to do so.

## 9. DEFAULT

**9.1 Principle:** If delivery is not effected on the date/within the time indicated in the contract, order or call-off, the SUPPLIER will be in default when this deadline expires. Postponements of the delivery date must be notified by the SUPPLIER and may require the agreement of M-INDUSTRY.

**9.2 Consequences of default:** If the SUPPLIER is in default, M-INDUSTRY may – except in case of force majeure – insist on subsequent performance and demand reimbursement of any damage incurred without setting a final deadline. Alternatively, M-INDUSTRY is entitled to waive subsequent performance or to purchase the equivalent delivery from a third party at the expense of the SUPPLIER, or to withdraw from the contract. In the absence of express notification, performance will not be waived. In the case of just-in-time deliveries, M-INDUSTRY has the right, in the absence of advance notification, to destroy production already started, at the expense of the SUPPLIER. Goods received late may be returned to the SUPPLIER if they are unsaleable, subject to settlement of the agreed purchase price and the damage incurred, and/or destroyed at the expense of the SUPPLIER. The right to lodge claims for compensation for non-performance remains reserved in each case.

**9.3 Penalty in the event of default:** If the SUPPLIER is in default, he is liable for payment of a penalty for each calendar week commenced in a fixed amount of 3%, up to a maximum of 20% of the purchase price for the quantity of the goods to be delivered which is in default. Clause 9.2 remains reserved.

## 10. DELIVERIES THAT ARE OTHERWISE INCORRECT

**10.1 Fixed administration fee:** If a delivery is wrong (e.g. incorrect customs invoice, incorrect placement of product labelling, deviations from the goods inwards standard, early delivery, etc.), and when defects are notified, the SUPPLIER may in each case be charged a fixed rate sum of CHF 300.- to cover administrative expenses.

**10.2 Early delivery:** M-INDUSTRY may either send back goods that are received too early, or store them at the expense of the SUPPLIER.

## 11. TRANSFER AND RESERVATION OF OWNERSHIP

**11.1 Principle:** The ownership of the goods supplied transfers on delivery at the place of performance.

**11.2 Entry in the register of reservation of ownership:** The reservation of ownership is effective only if the reservation is entered in the relevant register of reservation of ownership (Art. 715 f. CC).

## 12. RIGHTS IN PACKAGING, TRADEMARK PROTECTION

**12.1 Rights in packaging:** All packaging created on the instructions of M-INDUSTRY as well as the rights in the trademarks or names attached on the

packaging and on the product are the property of M-INDUSTRY.

**12.2 Trademarks, prohibition of unauthorised use:** In the absence of any written agreement to the contrary, articles which bear trademarks of M-INDUSTRY or of the Federation of Migros Cooperatives (Migros, M-Budget etc.) are only permitted to be sold in Migros sales channels. In particular, where performance is waived (e.g. because of defects, default, etc.) it is prohibited to place the relevant articles on the market.

### 13. PRODUCT LIABILITY

**13.1 Duty of indemnification:** If product liability claims are made against M-INDUSTRY or other contract partners, the SUPPLIER guarantees to provide full indemnification.

**13.2 Product liability insurance:** The SUPPLIER must take out and maintain a suitable insurance with adequate cover. The amount of cover on the insurance does not limit the liability of the SUPPLIER. A copy of the relevant insurance documentation must be submitted to M-INDUSTRY if so requested.

### 14. LIABILITY FOR ASSOCIATES

**Liability for damages:** The SUPPLIER is liable for damages caused by his contract partners and associates, irrespective of any fault on his own part.

### 15. ASSIGNMENT AND PLEDGE

The SUPPLIER may only assign or pledge any claims against M-INDUSTRY after having obtained prior written agreement of the M-INDUSTRY with the exception of an assignment to Migros Bank.

### 16. SEVERABILITY CLAUSE

**16.1 Partial invalidity:** If individual terms in the GTCP or in individual contracts are or become invalid, the remaining terms will remain fully operative. The invalid terms must be replaced by another term which is as close as possible to the commercial purport and intended commercial purpose of the inoperative or invalid terms.

**16.2 Gaps:** If there are any gaps, the same rule will apply as in the case of partial invalidity.

### 17. REFERENCES

The SUPPLIER is not permitted to give M-INDUSTRY as a reference unless he has obtained the prior written agreement of M-INDUSTRY to do so.

### 18. CONFIDENTIALITY

The SUPPLIER is obliged to maintain secrecy in respect of all business secrets of M-INDUSTRY which he has obtained in the course of his business activity. The SUPPLIER must ensure that this obligation is also adhered to by his employees and any auxiliaries brought in.

### 19. APPLICABLE LAW & PLACE OF JURISDICTION

**19.1 Applicable law:** All legal relationships between the parties will be judged exclusively in accordance with Swiss law, to the complete exclusion of the conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods of 11.4.1980.

**19.2 Place of jurisdiction:** The exclusive place of jurisdiction for all disputes is the seat of M-INDUSTRY.

Name of Supplier, address and stamp

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Place, date

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Signature

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Name, position

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Signature

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Name, position