

Terms and Conditions of Purchase Tokai Europe GmbH

30th June 2004



1. General

(a) Our purchase and secured orders are subject exclusively to the following Terms and Conditions of Purchase. Deviating Supplier's terms and conditions of sale are valid only if we expressly accept them in written form. The unreserved acceptance of goods and services or payment thereof does not mean that we accept the Supplier's terms and conditions of sale.

(b) TOKAI manufactures qualitative disposable gas cigarette and utility lighters. For this reason, parts which are supplied by Suppliers are subject to quality and safety technical requirements.

2. Order / Order Confirmation / Secrecy

(a) Supply contracts (orders and acceptance) and call-off deliveries as well as amendments and supplements shall be in written form. Should the Supplier not accept the order within two weeks of its receipt, then TOKAI is entitled to cancel the order.

All conditions, specifications and other data, which are attached to the order or listed therein are an integral part of the order.

An order confirmation which deviates from the order is only then effective, if expressly confirmed by us in writing.

The order shall be regarded by the Supplier as a business secret and treated confidentially. The Supplier shall be liable for all damages, which arise from infringement of the aforementioned obligation.

(b) If, with respect to certain products, written call-off orders have been agreed with the Supplier, then we expect both an order confirmation for the 1st order as well as order confirmations for the individual call-off orders from this contract. Terms and forms are in line with 2 (a). Call-off orders shall become binding latest within a time limit of two weeks after receipt if the Supplier does not object.

3. Change of Item to be delivered

Should we request a change of item to be delivered, then the Supplier shall, within a time limit of two weeks, inform and confirm in writing any price increase or reduction and any effect it may have on the delivery date.

4. Delivery dates, Delivery Delay, Force majeure, earlier Delivery, Partial Deliveries, Release of Documentation

(a) The agreed delivery terms are binding. Decisive for meeting the delivery date or term is the receipt of the goods at the place of receipt or use named by us or the timeliness of successful acceptance procedures.

In the event that the delivery term is referred to or confirmed by the Supplier as "estimated", "approximate", "under usual reserve" or suchlike, then maximum 8 calendar days may lie between the mentioned term and actual delivery.

The unreserved acceptance of the delayed delivery shall not constitute a renouncement of any claim to compensation.

(b) Should the Supplier recognise that an agreed delivery date cannot be met, for whatever reason, then we must be advised immediately in writing, indicating the reasons for and the anticipated duration of the delay.

In such cases the Supplier shall nevertheless undertake all required measures so that the agreed delivery date can be met or that only a slight time delay is incurred and shall advise us in writing what has been undertaken in individual cases hereto and what will still be undertaken.

Under no circumstances does the agreed delivery date change due to the notification of a likely delivery delay.

The Supplier shall give us the right, if necessary, to approach his supplier.

All costs, which are incurred as a result of the Supplier's failure, through his own fault, to inform us or to notify us without delay shall be borne by the Supplier.

(c) Should the Supplier be in default of delivery, then we are entitled to legal claims.

After the lapse of a fixed delivery term, which we deem to be appropriate, we shall be entitled to continue to demand the delivery/performance, to declare cancellation with or without damages, or to procure replacement from a third party and/or to claim damages instead of enforcing the performance. Our entitlement to the delivery/performance is rescinded only if we declare cancellation in writing or demand damages instead of the performance.

Additional costs incurred, in particular in the case of necessary covering purchases, shall be borne by the Supplier.

(d) The Supplier can only plead the absence of necessary data, which should be provided by us, if the Supplier has sent a written reminder and not received the data within an appropriate period of time.

(e) Force majeure and labour disputes release the contractual partners for the duration of the disruption and in the scope of their effectiveness from their obligation to perform. The contractual partners shall, within the bounds of reasonableness, immediately provide the necessary

information and, in good faith, adapt their obligations to the changed conditions.

We shall be released fully or in part from the obligation to accept the ordered goods/services and, in this respect, shall be entitled to cancel the contract if the goods/services are no longer usable – taking economical points into consideration – because of the delay caused by force majeure and/or the labour dispute.

Should these obstacles continue for more than three months, then either contractual party shall be entitled to cancel the contract without further ado.

(f) We reserve the right to return the consignment to the Supplier, at his expense, in the event of delivery earlier than agreed. If the premature delivery is not returned, then the goods will be stored by us until the agreed delivery date at the Supplier's expense and risk.

(g) We shall accept part deliveries only if expressly agreed. Such deliveries are to be indicated as such in the dispatch documents, wherein the remaining quantity is also to be listed.

(h) Should the Supplier be in default of delivery by more than 2 calendar weeks, for which a replacement delivery – irrespective of the legal reason – is not possible, then the Supplier shall, on receipt of the first written demand to do so, release the complete technical documentation, which is required to reproduce the parts by us or by third parties commissioned by us.

Should these parts be protected by commercial property rights, then the Supplier shall immediately conclude a licensing contract under the customary market terms.

(i) Insofar as the Supplier modifies or changes his production, then we are to be notified immediately. If production is stopped, then the Supplier shall ensure that the raw and auxiliary materials and factory supplies can be delivered for a period of at least one year after production has been stopped.

5. Dispatch / Transfer of Risk

(a) All dispatch papers shall contain the details in due form as required by us, in particular order and article numbers as well as quantity. The Supplier shall bear all costs incurred in the event that our forwarding instructions are not observed. The values determined in our incoming inspection will apply to quantities, weights and dimensions – unless other verification is available.

(b) Insofar as other written instructions have not been agreed, all deliveries are free place of use.

(c) The risk shall pass to us only when the goods to be supplied have arrived completely at the place of use named in the order.

(d) Deliveries shall be consigned in compliance with general regulations concerning transport and freight in appropriate delivery packaging. Compliance with dangerous goods regulations shall be the responsibility of the Supplier, so that we shall have no obligations and responsibilities.

(e) We shall not bear the costs of transport insurance and packing. Insofar as the Supplier is obliged, in line with the Packaging Law, to take back used packing material, then he shall bear the costs of the return transport and the disposal.

(f) In the event that the compilation of factory certification has been agreed, then these certificates shall be consigned together with the merchandise. If the certificates are not available when the goods are delivered, then TOKAI reserves the right to reject the delivery.

6. Invoicing and Payment

(a) The Supplier shall submit an invoice (1 original, 1 duplicate), under separate cover, for each consignment of goods or services. The invoice must agree in wording with the order descriptions and contain our order number(s). Invoices which do not contain these details shall be returned and do not constitute a basis for the due date. The payment term for the invoice begins with the working day after which the receipt of a proper and checkable invoice or the acceptance of the goods and/or services occurs – depending on which date is the later.

(b) Payment is made, insofar as nothing else has been agreed in writing, at our option, 8 days after receipt of the invoice with deduction of 3% discount, 14 days after receipt of the invoice with deduction of 2% discount or 30 days after receipt net. Invoices with so-called "prompt" or "immediate" terms of payment will, generally speaking, be paid after 30 days. If the delivery is accepted ahead of schedule, then the payment term begins on the delivery date in line with the order or from date of receipt of the invoice – depending on which date is the later.

(c) In the event of faulty or incomplete delivery, we shall be entitled to withhold payment until proper fulfilment of the order, without loss of rebates, discounts or similar payment concessions.

7. Quality Assurance / Quality Assurance Agreement

(a) The Supplier guarantees that the contractual goods and services comply with the agreed technical data, are made from the agreed materials and/or as named in the documentation, are free from material and production defects, meet the agreed functions in full and are not flawed with defects which cancel or reduce the value or the efficiency of normal usage in accordance with the contract. Should no materials have been agreed, then the contractual goods and services are to be manufactured using the best suitable materials.

The Supplier further guarantees that the goods and services comply with the respective valid legal and official regulations, accident prevention regulations, the recognised quality specifications, as well as state of the art.

(b) The Supplier shall check, before delivery that the aforementioned requirements are met by carrying out a suitable quality check which complies with state of the art and shall provide TOKAI with evidence if required to do so.

(c) The Supplier shall carefully check the documents which have been submitted in order to meet the contract. If there are clear indications that the supply agreement in regard to volume cannot be met in full or in part, or if the Supplier recognises that TOKAI's intended purpose of use will not / cannot be accomplished in full or in part, then the Supplier must inform TOKAI in detail of his misgivings before the start of the execution of the order.

(d) The Supplier shall conclude an appropriate Quality Assurance Agreement with TOKAI, insofar as TOKAI deems it necessary to do so.

8. Warranty, Warranty Period, Suspension, Restart and Regress

(a) All goods/services shall be made available to us free of physical and legal defects, they shall comply with the agreed composition and state of the art, legal regulations from official authorities, employers' associations and trade associations.

All goods shall comply with current safety regulations and shall be accepted by the appropriate test centres and be certified for the intended purpose of use.

The Supplier shall provide current Safety Data Sheets with each delivery. The Supplier shall release TOKAI from all regress demands in the event that the Supplier does not provide the Safety Data Sheets, or does not provide them on time or if they are incomplete. This also applies to all later changes.

If deviations from these regulations are necessary in individual cases, then the Supplier shall secure TOKAI's written consent. The Supplier's warranty shall not be affected by this consent.

Should the Supplier have any misgivings concerning our designated manner of execution, then the Supplier shall advise TOKAI in writing without delay.

(b) TOKAI shall notify the Supplier immediately, in writing, regarding faults in the goods/services, as soon as they have been determined within the structure of proper business practice, latest however within 5 working days after receipt of the delivery. The deadline for notification of hidden faults is 3 working days after discovery of the fault.

(c) The warranty period shall last two years unless otherwise expressly agreed. This also applies to multiple shift operations. It begins with the transfer of the goods to TOKAI or to third parties appointed by TOKAI or to the place of receipt or use specified by TOKAI. The warranty period for equipment, machines and appliances begins with the acceptance date which is named in our written declaration of acceptance.

In the event that acceptance is delayed through no fault of the Supplier, then the warranty period shall last two years after the goods to be supplied have been made available for acceptance. The warranty period for buildings and building materials shall be in compliance with legal regulations, for spare parts it shall be two years after installation/start-up and shall end latest four years after delivery.

It will be assumed, that a fault already existed at the time of the transfer of risk, if since the transfer of risk no more than six months have passed.

(d) In the event of defects in delivery/services, including non-attainability of guaranteed data and the absence of guaranteed characteristics, notified during the warranty period, then the Supplier shall, on demand, immediately and free of charge, including all incidental costs, at TOKAI's option, repair or exchange the parts and/or replace with a new consignment.

The Supplier shall bear, in particular, all expenditure incurred in connection with the determination and elimination of the defect, also those costs incurred by TOKAI, in particular inspection costs, disassembly and assembly costs, working and material costs as well as

Terms and Conditions of Purchase Tokai Europe GmbH

30th June 2004



transport costs and other costs for sending defective parts and returning defect-free parts. This also applies, insofar as the expenses are increased as a result of the item to be supplied being brought to a place other than the place of performance.

Rectification of defects is deemed to be a failure after the second unsuccessful attempt. Rectification of defects or new consignments shall be carried out, in emergency cases, in multiple shift operation or through overtime or by working on holidays, if deemed by TOKAI to be necessary for urgent operational reasons and if it can be expected of the Supplier.

After failure by the Supplier to meet a deadline, set by TOKAI, for rectification of defects or new consignment, then TOKAI is entitled to legal rights of withdrawal and reduction. TOKAI reserves the right in all cases to enforce claims for damages.

In the event that similar defects occur in more than 5% of the supplied parts (serial faults), then TOKAI is entitled to reject the complete quantity delivered as defective and to enforce legal warranty claims.

(e) Should the Supplier, through his own fault, not fulfil his warranty obligations within an appropriate time limit set by TOKAI, then TOKAI can itself take the required measures, or arrange for a third party to do so, at the Supplier's cost and risk. In urgent cases, after co-ordination with the Supplier, TOKAI can carry out the rectifications itself or have them carried out by a third party. Small defects can be rectified by TOKAI – in fulfilling our obligation to reduce damage – without limiting the Supplier's obligation from the warranty.

TOKAI can then charge the incurred expense to the Supplier. The same applies if there is a danger of unusually high losses.

(f) As long as the entitlement of TOKAI's claim is being negotiated, the period of warranty of the appliance / appliance parts is suspended from the time of reporting of the breakdown to the conclusion of negotiations or if an acceptance test has been agreed, re-started with the acceptance. If necessary the acceptance is to be applied for in writing. Under no circumstances however does the period end before the original delivery or service agreed limitation period for warranty claims.

(g) Should claims be made against TOKAI because of a fault in our product, which can be ascribed to the Supplier's goods, then §§ 478, 479 BGB (German Federal Law) apply to our claim for recourse against the Supplier.

(h) In the event of culpable negligence beyond the delivery of faulty goods, e.g. failure to clarify, advise, examine or carry out other protective obligations, then TOKAI can demand compensation for the arising consequential damage.

Consequential damage is such damage which we or third parties suffer through the delivery of faulty goods to other parties rather than through the goods themselves.

(i) Claims from the warranty do not arise if the fault can be ascribed to grossly negligent infringement of operational, maintenance and installation regulations, inappropriate or improper usage or faulty or grossly negligent handling and natural wear as well as unpermitted intervention by a third party in the delivered goods.

(j) The Supplier is obliged in the framework of economic and technical possibilities to utilise environmentally-friendly products and procedures in goods/services or additional services by third parties. The Supplier is liable for the environmental friendliness of the delivered products and for all consequential damage, which occurs as a result of infringement of the Supplier's legal obligations re waste disposal.

9. Product Liability

In the event that claims are made against TOKAI because of product liability, then the Supplier shall release TOKAI from such claims, insofar as the damage was caused by a defect in the product supplied by the Supplier. In this case the Supplier bears all costs and expenses including prosecution of an action or recall campaign. Content and scope of such a recall campaign shall be – insofar as it is possible and reasonable – agreed with the Supplier. Legal regulations apply.

10. Property Rights

(a) The Supplier vouches for the fact that, in connection with his delivery, no property rights are infringed. Should third parties make claims against TOKAI because of such an infringement, then the Supplier shall release us from all claims and bear any necessary expense in connection with the claim.

(b) TOKAI is entitled, at the Supplier's expense, to obtain permission to use the delivered goods and services concerned from the authorised party.

(c) With the delivery of a copyright-protected work, we shall receive from the Supplier a simple, unlimited utilisation right for all types of use.

11. Data, Secrecy

Any data, files, information, software and objects (samples etc.) which we make available to the Supplier in order to execute an order remain our property. Without our written consent, they may neither be reused nor copied, nor made accessible to third parties. Products, which are manufactured with the aid of our property, in line with our specifications or with considerable participation in the development, may be supplied to third parties only with our written consent. This agreement continues to apply beyond the duration of the co-operation.

12. Provision of Material, Processing, Mixture

(a) All materials etc. which we or third parties instructed by us to do so, make available to the Supplier remain the property of TOKAI. They may not be used for purposes other than those contractually agreed. These materials shall for the duration of the assignment be marked as our property, stored separately, kept in good condition and be insured.

(b) The Supplier is obliged to notify us immediately if third parties should impound these materials or if such measures are threatened.

(c) All such materials are to be released to us at the first request to do so.

(d) Changes of the materials made available are permitted only with our prior written consent and only in the permitted scope.

(e) Should our reserve goods be processed with other objects which do not belong to us, then we acquire co-ownership of the new object in relation to the value of our goods to the other processed objects at the time of the processing.

(f) Should the items made available to the Supplier be mixed inseparably with objects which do not belong to us, then we acquire co-ownership of the new object in relation to the value of the reserve object to the other mixed objects at the time of the mixing. Should the mixing result in the object being regarded as the Supplier's main object, then it is agreed that the Supplier shall transfer proportional co-ownership to us. The sole ownership or co-ownership shall be kept, for TOKAI, in the custody of the Supplier

13. Applicable Law

The UN-Convention on Contracts concerning International Sale of Goods (CISG) applies, in addition German law applies.

14. Jurisdiction and Place of Performance

(a) For all current and future claims from the business connection with traders, including demands from bill and cheques, the place of jurisdiction is exclusively Moenchengladbach. The same place of jurisdiction applies, if the Supplier has no general place of jurisdiction in Germany, or if after conclusion of the contract the Supplier has moved his place of domicile or usual place of residency abroad or if the Supplier's usual place of residency is not known at the time when legal proceedings are initiated.

We reserve the right however, to enforce our claims at any other admissible place of jurisdiction

(b) Insofar as nothing else has been expressly agreed, then the place of performance for the obligation to deliver to the dispatch address and/or place of use, for all other obligations from both sides is Moenchengladbach.

15. Liability

The Supplier's claims against TOKAI for damages for slight negligence, irrespective of legal grounds, are not possible. This exemption from liability does not apply to claims for damages, which are based on infringement of essential contractual duties by TOKAI. Furthermore, it does not apply to cases of bodily injury. In cases of slight negligence of essential contractual duties and grave negligence by sub-workers then damages for predictable, typical damage is limited.

Insofar as our liability is excluded or limited, then this shall also apply to the personal liability of our staff, agents and sub-workers.

16. Hazardous Materials

The Supplier shall, in compliance with §14 of The Dangerous Goods Regulation, provide TOKAI, with each submitted offer, a Safety Data Sheet and Accident Instruction Sheet for materials (materials, preparations) and objects (e.g. goods, parts, technical appliances, uncleaned empties), which because of their nature, their characteristics or their condition potentially pose a risk to life and health, the environment as well as objects and which because of regulations require special handling in relation to packaging, transport, storage, handling and waste disposal,

The Supplier shall hand over updated Safety Data Sheets and Accident Instruction Sheets should there be changes in the materials or the legal situation

17. Assignment

(a) The Supplier is not entitled to assign the order or essential parts of the order to third parties without prior written consent from TOKAI.

(b) The Supplier is not entitled, without prior written consent from TOKAI, to assign or to allow a third party to collect his demand against TOKAI.

Should an extended retention of title be submitted then the consent shall be deemed to have been granted.

In the event that the Supplier assigns, without our consent, a demand against us to a third party, then the assignment is effective anyway. We can then render payment to the Supplier or to the third party with a releasing effect.

18. Cessation of Payment, Insolvency

Should the Supplier cease payment, an interim insolvency administrator will be appointed, insolvency proceedings re assets opened or if protests of bills or cheques are presented against you, then TOKAI is entitled to terminate without notice the contract in full or in part, without the possibility of claims being made against us as a result.

Should we terminate the contract, then the performances carried out until then will be settled at contract prices, only insofar as they can be used according to regulations. Any damage incurred by us will taken into consideration when settling the account.

19. Contract Language / Correspondence

The language of the contract is German. All correspondence and all other documents are to be in the German language. This applies to all other documentation, e.g. for advance payment or performance bonds. Insofar as the contractual partner uses another language, then the German wording has priority.

20. Severability Clause

Should individual provisions of these Terms and Conditions become ineffective, then the effectiveness of the remaining terms and conditions hereby is not affected.