



## **GENERAL TERMS AND CONDITIONS OF PURCHASE (“GTCP”)**

Makita Engineering Germany GmbH, Makita Manufacturing Europe Limited and S.C. Makita EU S.R.L. - hereinafter collectively referred to as "Makita"

### **THE REQUIREMENT FOR THE WRITTEN FORM**

These Terms and Conditions of Purchase shall govern all business transactions with the Supplier, even if they are not mentioned in future contracts. They shall apply even if the Supplier invokes its own Terms and Conditions, particularly on accepting or acknowledging an order. Our Terms and Conditions of Purchase shall apply to the exclusion of all others. Any terms and conditions of the Supplier, which are incompatible with or differ from our Terms and Conditions, shall not be acknowledged. These Terms and Conditions shall also apply in the case of silence from Makita. Orders, contracts, and other agreements must be stated in writing. Verbal agreements require our written confirmation.

The Makita specified factory Standards are valid for all sample and serial production deliveries. Additionally, the applicable statutory provisions shall apply.

### **Article 1 Orders, Order Confirmation and Delivery**

Orders shall always be placed in the name of the ordering Makita Company unless expressly stated otherwise by the respective Makita Company. Orders shall only be valid if the Makita Company places or confirms them in writing. As far as Makita Company Orders are by telephone, the Supplier shall State the name of the ordering person on the delivery note and on the invoice.

The Makita Companies may request that the Supplier makes technical drawings and digital color photographs of all listed articles. As far as no specifically agreed catalogues are used, the Supplier shall note all articles on the catalogue pages provided by the Companies and furnish the photographs and the given texts at the foreseen positions. The Supplier shall send the desired quantity of technical drawings and/or catalogues back to the Makita Company no later than fourteen days after Performance.

With regard to reselling the articles, the Makita Companies determine the products' resale prices and the terms and conditions of sale unilaterally and independently.

Makita expects the Supplier to immediately sign and return a copy of the order as an order confirmation (the Supplier's own forms will be acceptable). If this is not done, our order shall be regarded as tacitly accepted. The price quoted in the order is binding.

In the scope of their business relations, the Supplier agrees if available from technical perspective to process Orders, delivery notes and invoices exclusively based on standardized EDI message types (EANCOM). The details shall be if applicable stipulated in the EDI Processes Agreement, which is to be concluded separately.

### **Article 1.1 Delivery**

Insofar as not agreed otherwise, deliveries shall be made at the cost of the Supplier free ramp DAP at the point of destination. In this case, the shipment risk of the delivery shall be borne by the Supplier. Regarding their presentation and content the deliveries must be made in accordance with the respective statutory provisions in effect at the site of receipt if not stipulated otherwise. Deliveries shall be made on commercially common charge carrier or re-useable pallets.

It is essential to comply with the agreed delivery date. Makita must be notified within 5 business days of any delays in complying with the delivery date. Each consignment must be accompanied by a delivery note stating the date, the order number and Makita's parts number with an accurate summary of the Contents. Makita reserves the right to examine the consignment within 10 days of delivery in order to check the volumes and to ascertain whether the consignment has any obviously quality defects.

Orders may only be delivered as a whole unless the respective Company agrees to partial deliveries in the individual case. No advance deliveries shall be allowed (“Just in time”).

### **Article 1.2 Delays in Delivery**

The costs incurred by any delay in delivery or failure to observe the general packaging Standards of the ordering Makita enterprise shall be borne by the Supplier in as far as Supplier is responsible for this delay. Regardless of any further legal rights, Makita shall be entitled to withdrawal from the contract or to claim damages for non-performance after the expiration of a reasonably extended deadline or to have the goods replaced by a third party in as far as the Supplier is responsible for the delay. The acceptance of the delayed delivery or Performance shall not mean any waiver of Claims to compensation.

If a fixed delivery date is agreed upon and there is a delay in delivery, Makita shall have the right to withdraw from the contract and claim damages without having to set an extended deadline. In the case of delay, a withdrawal by the Supplier is only acceptable if prior notification is given. In the event of strikes, lock-outs, interruptions of Operations or acts of God, which prevent the Supplier from performing its contractual obligations, Makita shall not be required to perform its own obligations for the duration of such a hindrance plus a reasonable lead time, without the Supplier being entitled to withdrawal from the contract or claim damages.

### **Article 1.3 Liquidated Damages**

If the Supplier is delayed, Makita shall have the right to claim liquidated damages amounting to 0.5 % of the value of the order for each week or part thereof, but of no more than 5 % of the value of the order. The Supplier shall have the right to prove that there has been no loss or that the loss is substantially less than the liquidated damages. Furthermore, Makita reserves the right to claim liquidated damages even if it accepts a late delivery. The claim to liquidated damages does not rule out the right to claim further damages.

### **Article 1.4 Packaging, Delivery & Freight**

Deliveries are generally free of Charge for Makita, including packaging, unless a different agreement has been made in writing. Makita's separate packaging rules and delivery conditions of the individual ordering Makita enterprise shall generally apply.

Makita is not obligated to accept the goods prior to the delivery date. Makita reserves the right to return consignments that are delivered prior to the delivery date. Makita is a "forbidden customer" (SVS/RVS Verbotskunde). This means that Makita insures all consignments that are destined for serial production if nothing else has been agreed upon.

### **Article 2 Proof of Origin, Import and Export provisions, customs**

The Supplier is obligated to provide, of its own accord, a customs-related proof of origin (Certificate of Origin) as well as the yearly Long Term Supplier Declaration for all goods produced for Makita.

For goods and services from a country (other than the ordering Makita Company) that is within the EU, the EU value added tax identification number shall be quoted.

Imported goods shall be if not stipulated otherwise delivered duty paid. Supplier shall be obliged to provide at your own expense the required declarations and information under Regulation (EC) No. 1207 / 2001, allow checks to be performed by customs officials and furnish the requisite official letters of confirmation.

Supplier shall be obliged to inform us in writing and detail about any (re-) export license obligations pursuant to German, EU and US export and customs regulations as well as export and customs regulations of the country of origin of the goods and services.

### **Article 3 Invoices**

As a rule, invoices must be sent to our address with our order number and parts number and description. Invoices must satisfy the conditions set out in applicable VAT Act of the respective Makita Company. If the goods are delivered prior to the delivery date, Makita reserves the right to equate the date of the invoice to our specified delivery date, in as far as the Supplier is responsible for the deviation from the agreed delivery date.

### **Article 3.1 Payments**

Payments shall be made within 60 days of delivery net, unless alternative agreements have been made in writing. In the case of unsatisfactory delivery or Performance, Makita shall have the right to withhold payment until the contract has been properly fulfilled.

#### **Article 4      Reservation of Title**

In as far as Makita has provided the Supplier with parts, we claim reservation of title for these parts. If the parts are processed or mixed with other items, Makita shall acquire co-ownership of the new item in ratio to the value of the items one to another.

#### **Article 5      Product Liability**

The Supplier is obligated to indemnify Makita from any Claims made by third parties on the basis of product liability in as far as the Supplier is responsible for the defective product and any loss incurred relating to the principles of product liability law. Further legal Claims will remain unaffected. Furthermore, Makita reserves the right to Charge the Supplier for any expenses incurred in connection with product liability.

#### **Article 6      Intellectual Property Rights**

The Supplier shall ensure that the goods are not in violation of any domestic or foreign laws. In the event of disputes, the Supplier shall indemnify Makita from any Claims made by third parties.

As part of the scope of supply/service

- Supplier shall transfer to Makita-Purchaser ownership of all technical documents (also for subcontractors) and other documents needed for manufacture, maintenance and operation. Said technical documents shall be in German and shall be based on the international SI standard system.
- Supplier shall grant Makita-Purchaser non-exclusive and irrevocable usage rights that are unrestricted in terms of location, time and content to all protectable supplies/services for all known and as yet unknown types of use; [in particular Makita-Purchaser shall be entitled without restriction to duplicate, edit, disseminate in unaltered and altered form and publish via wire-based or wire-less technology all supplies/services, and to transfer all contractually granted usage rights to third parties with or without charge].
- Supplier shall grant Makita-Purchaser exclusive usage and utilization rights in the scope described above to those supplies/services he produces specifically for Makita-Purchaser.
- Supplier pledges to strictly observe the provisions of the applicable Employee Inventions Act and file claims to the corresponding inventions in due form and time. This shall also apply insofar as Supplier does not employ his own staff, but rather commissions third parties in the framework of the permitted employment of temporary workers.
- Makita-Purchaser shall have the unconditional authority to carry out or have carried out by third parties repairs and modifications to the purchased supplies/services, and also to manufacture spare parts or have them manufactured by third parties.

#### **Article 7      Drawings, Data Sets, Drafts, Supplied Materials, Tools and Machinery Materials**

Materials such as drawings, data sets, drafts, supplied materials, tools and machinery materials that Makita provide to the Supplier shall remain our property. Any production equipment, which was paid for by Makita and produced by the Supplier or obtained according to our specifications, shall remain our property and must be clearly identified as such. A separate loan agreement shall cover such items. The materials and tools must be carefully stored and insured at the Supplier's expense. Production equipment may be scrapped only after Makita has been notified and given express written consent.

Supplier undertakes on first demand of the Makita enterprise, which has full, or partly ownership in tools or respective tool and machinery materials to confirm the respective inventory to the valuation date requested by Makita.

#### **Article 7.1      Supplementary Provisions concerning Technical Discussions**

All technical discussions, which occur after the signing of the contract, shall, immediately upon completion of the discussions, be written up by the Supplier in a memo, which is consecutively numbered and signed by both parties. No changes to the contract shall result from these discussions or on the basis of the memo Contents, without an additional order.

Makita must be notified of any ensuing changes in price and/or delivery date in a separate correspondence within 14 calendar days following such a discussion. This correspondence must contain the price increase and/or decrease and/or the change in delivery date. In as far as an accurate price quotation within the specified



period of time is not possible, the Supplier shall provide Makita, on a temporary basis, with an estimate of the price. A firm offer must be submitted within 4 weeks. The manner of Submission for this offer must be such that the individual material price and hourly cost are easily determined. Makita shall not recognize any price increases and/or changes in delivery date that are submitted at a later date. Makita is not obligated to accept any submitted price increases and/or changes in delivery date, regardless of timely Submission.

#### **Article 8 Confidentiality Agreement**

The Supplier agrees to maintain confidentiality concerning the contract and any disclosed business and technical information or know-how throughout and beyond the term of the contract. Disclosure of given information or use of any supplied pattern other than in fulfilment of the contract is only permitted with Makita's written consent. The Supplier agrees to impose this Obligation of confidentiality to those persons who, in fulfilling the order, require access to this information. According to the scope of the contract, the Supplier shall notify its subcontractors of this confidentiality agreement and shall obtain their signed confirmation of this notice. Amendments to this agreement are required to be in writing. Makita shall claim damages for any breach of this confidentiality agreement.

#### **Article 9 Quality, Complaints, Warranty**

The Supplier is obligated to comply with the agreed upon technical specifications and point out any possible improvements or variance of the data from legal provisions and other regulations. Technical modifications, e.g. measurements, tolerances, dimensions, colors or changes in materials that differ from the original agreements shall only be permitted with Makita's written consent. The supplier shall observe the provisions of the applicable Equipment Safety Law at the legal seat of the ordering Makita Company.

The Supplier shall ensure that each supplied item conforms to international laws, safety regulations, other obligations imposed by local and federal authorities (e.g. Regulation 2011/65/EU (RoHS 2), REACH, EU Energy consumption labeling - Regulation 2010/30/EU (EVPGV) and other) or the state-of-the-art requirements, in as far as it is under the Supplier's responsibility. The Supplier shall ensure that the delivered item is free of defects in relation to its design, materials and production process. The general warranty period for all items shall be 24 months from the date of delivery or Makita's approval. Makita shall have the right to return any defective goods for rectification of defects free of Charge. The period for submitting complaints regarding recognizable defects shall be 10 days. Makita must notify the Supplier of any hidden defects 10 days after they have been discovered. Makita shall have the right to demand a price reduction when the defect is found. In urgent cases, Makita shall have the right carry out the necessary improvements or shall return the goods at the Supplier's risk and expense. Makita shall have the right to withdrawal from the contract and/or to demand compensation in as far as the Supplier is responsible for the defects of the items and corrective action has failed. If action to correct defective deliveries has consistently failed after an extended deadline, Makita shall have the right to receive compensation for any loss caused by the defects and reserves the right to rescind that part of the contract, which has not been performed.

If Claims under warranty are made by third parties against Makita after integration of the delivered item, the Supplier must reimburse Makita for all expenses incurred in rectifying the damage. Makita shall give the Supplier written notification, and include therein the type, scope, and subject of any Claims covered by the warranty and made by third parties as soon as it comes to our attention and inform the Supplier that it is liable for the damages. In general, the statutory laws concerning a company's rights of recourse shall apply. The Supplier shall provide compensation for any damage caused by depreciation in value or loss.

Insofar as the delivered goods as well as their transport and/or sales packaging fall under the scope of application of article 33 of the Regulation EC 1907/2006 (REACH) or 2011/65/EU (RoHS2), the Supplier must transmit the substances to be named pursuant to REACH or 2011/65/EU (RoHS2) contained therein electronically to the affected Company or a third party named by the Company prior to shipment.

#### **Article 10 Inspection Reports and Analyses**

Makita's inspection reports and analyses are solely for the Supplier's use and shall not be made accessible to third parties

## **Article 11 Place of Performance, Applicable Law, Place of Jurisdiction**

Insofar as Supplier and Makita Purchaser agree validity of one of the “Incoterms” of the International Chamber of Commerce (ICC) for the contract, the currently valid version thereof shall apply. They shall apply only insofar as they do not contradict the provisions of these general terms and conditions of purchase and other concluded agreements. Unless otherwise agreed in writing, the supply/service shall be “delivered at place” (Incoterms 2020: DAP) to the place of delivery/performance or use indicated in the purchase order. The previously mentioned place shall also be the place of Performance for supplies and services.

The terms of any Supply Contract (including these General Purchase Terms and Conditions), also regarding its interpretation, shall be governed by and construed in accordance with the laws of the country (and state or province, if applicable) of respective Makita Enterprise as Buyer’s principal place of business.

The parties agree that the courts having jurisdiction over Makita Company as Buyer’s principal place of business shall have exclusive jurisdiction and venue for any action or proceedings commenced under any Supply Contract. This choice of court agreement does not apply for claims of other contractual or statutory antitrust damage claims.

In the event that a third party brings to court a claim against Makita Company as Buyer or one of its Affiliated Makita Companies for damages for personal injury or property damage resulting from a product defect (“Product Liability”) or because of an infringement of Intellectual Property Rights, Makita Company as Buyer may at its discretion, conduct at such court of venue the proceedings necessary to enforce indemnification from Seller or seek recourse against Seller. In such a case the applicable laws of the forum state shall exclusively govern the rights and obligations of the parties involved.

Makita reserves the right to take legal action at the Supplier's principle place of business. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply. If any part of these terms should be or become invalid, the remaining provisions shall not be affected

## **Article 12 Miscellaneous**

This General Terms and Conditions of Purchase supersedes and invalidates all other General Terms and Conditions of Purchase, commitment and warranties relating to the subject matter hereof which may have been made by the parties either orally or in writing prior to the date hereof, and which shall become null and void with respective inclusion of these GTCP latest from the date these GTCP are signed.

### **Article 12.1 Anti-Corruption Clause**

The Supplier undertakes to take all necessary and reasonable measures to avoid anti-competitive behavior, corruption and bribery. Accordingly, the Supplier shall not offer, promise or grant through his employees, members of an executive body, or third parties, benefits or other advantages (e.g. cash, valuable gifts or invitations that primarily have no business purpose, e.g. to sporting events, concerts, cultural events) to employees or management executives, including their relatives, of the Makita Corporations or have such benefits or advantages offered, promised or granted in any other way by third parties.

This Provision does not apply to product samples given to the Makita Corporations during the regular course of business for examination or quality testing purposes. The right to Claim damages shall remain unaffected.

### **Article 12.2 Minimum Wage Act**

Supplier pledges to Makita Purchaser that he shall comply with the provisions of the applicable Minimum Wage Act and indemnify Purchaser against claims by third parties.

### **Article 12.3 Responsibility for Transport**

During transportation the applicable federal and European statutory provisions, in particular the provisions of the law on the transportation of hazardous goods and the applicable hazardous goods directives including the respective annexes and appendices must be complied with.

Supplier expressly assures that he is in possession of all permits and authorizations required for the transport in accordance with the applicable Road Transport Law (permit, EU license, third country permit, CEMT permit, Swiss license).

If the supplier does not carry out a transport order himself, he is obliged to include the obligations named in this agreement in the transport contract with the commissioned carrier and only to commission such carriers





who meet all the requirements of the applicable road haulage law, the regulation (EEC) No. 881/92 and Regulation (EEC) No. 3118/93.

#### **Article 12.4 Quality**

Supplier shall install and maintain a state-of-the art (e.g. DIN/ISO 9000–9004 or comparable), documented product related quality system of suitable type and scope. Supplier shall prepare records, in particular of quality inspections, and make these available to Makita-Purchaser on request.

Supplier hereby agrees to quality audits being carried out by Makita-Purchaser or Makita-Purchaser's representative to assess the efficiency of said quality system. Moreover the separate transferred and concluded Quality Assurance Agreement of the ordering Makita enterprise shall be applicable.

#### **Article 12.5 Applicable Language Version**

Insofar as these General Terms and Conditions of respective Makita Purchase are made available in another language, the English version shall take precedence.

#### **Article 12.6 Data protection**

Makita Purchaser points out in accordance with applicable Federal and European Data Protection Act (e.g. BDSG and DSGVO) that Makita shall store data relating to Supplier on the basis of the applicable Federal Data Protection Act.

The Supplier must without written consent of Makita not involve subcontractors in relation to delivery of goods or services provided or the collection, processing or use of Makita's or its customers personal data.

The Parties shall use the data regarding the goods delivered by the Supplier to Makita or as provided by the respective other Party or the Parties in the course of their business relations only for admissible and legal business purposes. The Parties shall treat the data confidentially, be it a single piece of Information or part of a work product containing the data or parts thereof ("work product")

The Parties shall make the required dispositions to guard against third parties gaining access to the data and/or work products. Affiliated companies of Makita and their personnel are not considered as third parties. The Parties inform their respective employees who gain access to the data and/or work products about the obligations pursuant to this item.

#### **Article 12.7 Prohibition of advertising**

The use of the Makita logo/logotype and any mention of the Makita Group or individual Group companies as reference customers of Supplier requires the express prior consent in writing of Makita in each individual case.

#### **Article 12.8 Termination**

Makita Purchaser shall, if not stipulated in written form otherwise, entitled to terminate the contract in full or in part. In such an event, Purchaser is obligated to pay for all supplies/services completed up to that point and make appropriate payment for material procured and work/services performed. Further claims of Supplier are excluded.

Makita Purchaser is entitled to terminate the contract with immediate effect for cause in particular where a material deterioration in the financial situation of Supplier occurs or threatens to occur and thus endangers the fulfillment of commitments vis-à-vis Makita Purchaser. In this case Makita Purchaser has the right to acquire material and/or semi-finished products including any special equipment on reasonable terms and conditions.

As of November 2021 Makita