

ALLGEMEINE EINKAUFSDINGUNGEN / GENERAL TERMS OF PURCHASE

der MAPLAN GmbH (in weiterer Folge „MAPLAN“ genannt) / of MAPLAN GmbH (hereinafter referred to as „MAPLAN“)



I. General considerations

1. All orders and purchasing transactions of the firm MAPLAN GmbH, Maplan-Straße 1, A-2542 Kottlingbrunn (hereafter referred to as MAPLAN) are carried out (hereafter referred to as „MAPLAN“) exclusively on the basis of the general conditions of purchase and the delivery and packaging guidelines in their current version. The general conditions of purchase of Maplan and Maplan's guidelines for delivery and packaging will also apply for all future business transactions without requiring special reference thereto. Maplan's General conditions for delivery and packaging as well as all conditions derived from these form part of the general conditions of purchase. Agreement to deliver implies the supplier's agreement with the general conditions of purchase and the general conditions of delivery and packaging laid down by MAPLAN.

2. Terms of contract that are either contradictory or complementary to these conditions of purchase and in particular terms of business regarding sales or delivery stipulated by the supplier will be considered as invalid and will not become part of the contract even if they are known to the other party. This also applies for cases where MAPLAN does not expressly disapprove of these conditions or in cases where other documents or general business terms of the supplier are based on the acceptance of such conditions. Therefore in cases where deliveries or services are accepted without any opposition thereto, no such conditions will be binding.

3. All agreements including additional agreements and appendages will only be valid if they have been put in writing and confirmed in writing by MAPLAN. Oral agreements, additional agreements or declarations by MAPLAN staff members which differ from the written agreement or which complement that agreement are invalid and not binding.

4. Orders by MAPLAN to conclude a legal agreement (hereafter) are only binding if put in writing and if the merchandise or service to be delivered has been precisely defined. Transmission by electronic means is considered to have been made in writing. In cases where an order is not conditioned by a time period, said order will be considered as binding for a period of 4 working days (receipt period) effective from the time when it was issued.

5. If simultaneously with the order MAPLAN provides its own sample of the order confirmation, then in case the order is accepted it must be returned by the supplier without modifications within the receipt period. The same applies to order confirmations from the supplier in cases where the sample from MAPLAN is not returned or in cases where no sample was made available by MAPLAN. Orders made by email or fax are also considered as having been made in writing. The acceptance of orders from MAPLAN by the supplier can not only be made expressly as in the case of an existing business relationship between MAPLAN and the supplier, but is also presumed to have been made if the supplier does not express opposition to the order within a period of four working days.

6. MAPLAN has the right to cancel an order during a period of up to 3 working days effective from the time of confirmation of the order by the supplier.

7. The supplier should check all indications made by MAPLAN on the order and in particular the technical specifications and conditions, other descriptions and data relevant to technical feasibility; the supplier must issue warnings in cases where orders are faulty, incomplete, not clear, not executable or incompatible with reasonable expectations from MAPLAN in terms of successful delivery.

8. The supplier undertakes to process requests from MAPLAN within 4 working days to respond to the written request from MAPLAN. Requests are generally non-binding unless otherwise agreed in writing.

9. The indications given by the supplier in its product documentation and also the specifications given in the form of samples, specimens, drawings, figures or similar are binding and will be considered necessary characteristics of the merchandise.

10. Periods of corporate holidays or periods where production will be stopped for more than five working days are to be notified to MAPLAN at least 3 months in advance specifying the exact dates.

11. MAPLAN will not accept products delivered which are not exactly in conformity with MAPLAN documents (MAPLAN drawings, technical data sheets, clear identification number etc.) In such cases the supplier only has the right to apply for permission for the deviation by addressing MAPLAN in advance. The additional costs incurred by such deviations from the standard specification will be invoiced to the supplier.

12. It is not permitted to delegate orders or substantial parts of orders to subcontractors. In case where MAPLAN has expressly agreed in writing that subcontractors may be used then the supplier will still assume liability according to article VI.

II. Prices

1. The prices mentioned in the order (or order confirmation according to section 2) are fixed prices including all costs, charges, taxes and additional expenses (in particular additional charges, packaging costs, transport or shipping, custom duties, taxes, charges as well as additional expenses of any kind) and as such they may not be modified until the final delivery of the order. In cases where the price has for instance been fixed on the basis of an order confirmation or annual fixed price agreement in the form of a price list, said price is to be considered as binding and unchangeable. Unforeseeable changes in terms of import or export duties and charges and changes in currency exchange rates do not entitle the supplier to change the price. The Euro is to be used as the standard currency. In case where, after the

conclusion of the contract, the exchange rate of a foreign currency in relation to the Euro changes, the agreed price will still be maintained.

2. In cases where the order submitted by MAPLAN doesn't mention prices, the supplier must submit a binding quote to MAPLAN. The acceptance of the offer of a supplier (in particular that of a quote) will only be binding if confirmed in writing by MAPLAN (electronic transmission will be regarded as satisfactory).

3. Furthermore, MAPLAN is entitled to make payment of the price in the currencies mentioned in the annex to these general conditions of purchase. The exchange rate is calculated based on the average exchange rate between the currency of the contract and the chosen currency.

4. Clauses concerning sliding scale prices will not be accepted by MAPLAN.

5. Price adjustments by the supplier will only take effect after express agreement by MAPLAN. Without such express agreement a price adjustment by the supplier will not be considered as valid.

III. Terms of payment

1. Payment by MAPLAN is subject to the following conditions: delivery of the merchandise and all training and documents to be provided according to point IV section 7, and the transmission of an invoice providing the details required by legislation on value added tax (in particular the invoice will need to specify the following points: Order number and date of order, position number according to the order, name of the staff member submitting the order, quantity and designation, prices and rebates, delivery note number and date, country of origin of the merchandise, customs duty number). As a general rule invoices are payable within 30 days. The supplier will grant a rebate of 31 percent if payment is made within 21 days. The payment delay only becomes effective after receipt of the invoice at MAPLAN. The day of payment is to be considered as the day when the account from which MAPLAN makes the payment is debited. In cases where sums owed to MAPLAN by the supplier are offset against the value of the invoice, this is to be considered as equivalent to payment.

2. Delivery dates which were agreed to writing and which were confirmed are considered to be the earliest date when invoicing can be made. Earlier invoicing on the basis of deliveries made before the due date requires a preliminary written agreement with MAPLAN. In case of early delivery MAPLAN reserves the right to consider only the initially agreed delivery date when calculating the date payment will be made.

3. In cases where MAPLAN agrees to an advance payment there is a possibility that MAPLAN may claim for reimbursement of such sums including VAT from the supplier (for instance in cases where the contract is canceled). To mitigate such risk MAPLAN may require the supplier to provide a bank guarantee, which must be issued by a notoriously solvent European-based bank based previously approved by MAPLAN. Payment of the sum corresponding to that bank guarantee is to be made upon first request. The amount of the bank guarantee must cover the amount of the advance payment including VAT made by MAPLAN. Such a bank guarantee must be valid for a period of at least 4 weeks after the latest agreed date of delivery.

4. The supplier must not cede its rights to payment against Maplan to third parties unless Maplan has previously agreed to this in writing. MAPLAN has the right to cede its obligations and rights resulting from the contract to parties after having notified the supplier.

5. MAPLAN has the right to deduct amounts owed by the supplier from the amounts invoiced to MAPLAN. The supplier however may not proceed in a similar way. This clause particularly concerns cases where MAPLAN claims a right to indemnity owing to claims or warranty claims or non-observance of the general conditions of purchase or MAPLAN's conditions of delivery and packaging or other claims with regard to the merchandise delivered by the supplier; in such cases MAPLAN will generally issue a debit note to the supplier.

IV. Delivery and respect of delivery dates

1. Detailed regulations regarding packaging, delivery and expedition can be found in MAPLAN's general conditions of delivery and packaging. These regulations are part of the general conditions of purchase. The non-observance of MAPLAN's general conditions for delivery and packaging is to be considered a serious breach of contract on the part of the supplier. The additional costs incurred by non-receipt of the merchandise on the agreed date will be invoiced to the supplier.

2. The delivery date agreed to in writing (for instance on the order confirmation) is binding and must be strictly respected by the supplier. If delivery is made earlier MAPLAN is not obliged to accept the merchandise. The non-respect of the delivery date agreed upon is considered as a serious breach of contract on the part of the supplier and entitles MAPLAN to cancel the contract, to give the order to another supplier and/or to invoice the additional costs incurred. The supplier may not make reservation of ownership when dealing with MAPLAN.

3. In cases of late deliveries, if MAPLAN does not cancel the contract the supplier will receive a reminder for the delivery of the goods concerned. In case of receipt of such reminders for delivery and if the merchandise has not yet been dispatched, the supplier must respond on the same day indicating a new delivery date; in cases where the merchandise has already been dispatched, the supplier must answer by supplying the delivery note and the confirmation of receipt. Clause 11 will also be applied in these cases.

4. In cases where an order by MAPLAN does not specify a delivery date, the delivery is to be made without delay.

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5. Unless otherwise agreed all deliveries are to be made to the following address: Maplan GmbH., Maplanstraße 1, 2542 Kottlingbrunn. The delivery date indicated on MAPLAN orders concerns the date of delivery to MAPLAN's premises. Earlier invoicing on the basis of deliveries made before the due date requires preliminary written consent from MAPLAN.

6. The delivery (dispatch/transport) to the destination is made at the expense and risk of the supplier. The specific indications on the order are considered as the prevailing agreement. Unless agreed otherwise DAP (EU) / DDP (outside EU) Kottlingbrunn / to factory will apply (according to INCOTERMS 2010).

7. The supplier is obliged to give immediate written notice to MAPLAN if conditions arise which may cause late delivery (unforeseen production problems or problems with stock supply etc.). In cases where the supplier does not provide such notice, said supplier cannot deny responsibility for the late delivery. MAPLAN is entitled to immediate cancellation of the contract without setting a new date for delivery or to apply the sanctions mentioned under point 11.

8. All deliveries will be associated with the legally required or contractually agreed documentation of all kind; this applies in particular to such goods for which safety data sheets, certificates or test protocols are required. Furthermore, user manuals, technical data sheets, descriptions, documentation or warnings, approved tolerance requests, measuring protocols, transport documents, descriptions, delivery notes and packing lists are to be supplied. Justifications concerning the obtaining or the attribution of test certificates or norm certificates are to be part of the delivery. In cases where the measurement protocols or test protocols have been supplied at the time of order these are to be checked in their entirety, filled in and sent to MAPLAN by email to quality@maplan.at and supplied together with the delivery documents. All documents are to be supplied in the German language or English language.

9. The supplier is obliged to assure secure packaging of the merchandise which is in compliance with legal requirements; the risks and costs related to packaging are to be assumed by the supplier. Details related thereto are to be found in MAPLAN's general conditions of delivery and packaging.

10. The hours for delivery are specified in MAPLAN's General conditions of delivery and packaging. Deliveries outside of these hours are only possible after previous agreement with MAPLAN.

11. In case of late delivery MAPLAN is entitled to a price reduction corresponding to 1% of the order value for each day of late delivery. The amount of the aforementioned penalty may not exceed 5% of the order value. This contractual penalty is applied whether or not the late delivery caused any damage and regardless of the actual value of any incurred damage. Other claims for damages (in particular in relation to late delivery) may still be made. In case of late delivery MAPLAN may decide not to fix a new delivery date and may have recourse to another supplier for those deliveries which are late in order to avoid further damages. In such cases the supplier will bear the expense related to the order to another supplier.

V. Warranty

1. The supplier will guarantee that the delivery of goods which are in conformity with the contract, are free of faults and have characteristics in compliance with the technical standards in force, the technical norms, the statutory rules, applicable safety guidelines, the points assured by the supplier, the indications given in the catalogs and other documentation forming part of the contract; it is also guaranteed that the goods delivered are not subject to rights or claims from third parties.

2. Furthermore the supplier will guarantee that the materials delivered are compatible for use through several shifts involving 24 hours of non-stop service.

3. The supplier must always inform MAPLAN immediately of any risks that are involved with the use of the materials supplied.

4. In case of serious defaults which are incompatible with the correct use of the materials supplied, MAPLAN has the right to withhold payment of all or part of the purchasing price until such time as the detected faults have been resolved.

5. The supplier will provide a warranty for all faults within the framework of the Austrian law. The warranty period is two years effective from time of receipt of the merchandise at the agreed delivery point; in cases where a formal receipt is required, the date of said formal receipt will be the effective start date of the warranty period. In cases where the delivery - modified or not modified - is made to customers of MAPLAN with the knowledge of the supplier, the warranty period will commence on the date of receipt by MAPLAN's customer. In case of hidden defects the warranty period will only be effective from the date on which such defects are detected by adequate means.

6. In cases where the defect occurs within the first 12 months of the warranty period it will be assumed that such defect already existed at the time of delivery unless proof to the contrary is provided.

7. In cases where it is possible to remedy a fault MAPLAN may decide whether the material is to be replaced or repaired. MAPLAN is not obliged to give the supplier the possibility to repair faulty articles. In cases where a fault has been remedied by repair or replacement of the article concerned, the warranty period will start again effective from the time of the replacement or repair.

8. Depending on the choice of MAPLAN, warranty claims must be satisfied at the place of delivery, in another MAPLAN plant, at the supplier premises in a place determined by contract, at the premises of one of MAPLAN's distribution firms or at the client premises. All costs incurred in this context (in particular transport, indemnities for professional travel, manpower costs and material costs and investments related to the detection of the origin of the fault and possibilities of remedy) are to be borne by the supplier.

9. The supplier will remedy faults without delay. In cases where the supplier doesn't provide remedy within a technically acceptable delay of at most two working days, MAPLAN may organize the remedy itself or through the help of third parties at the expense of the supplier; this does not exclude further claims or rights against the supplier.

10. In case of faults where the remedy cannot wait (in particular if there is a risk of machine downtime, danger etc.). MAPLAN has the right to remedy the faults itself or to call third parties for the remedy at the expense of the supplier. In such cases the remedy to the faults does not imply the absence of responsibility of the supplier.

11. In case where MAPLAN accepts the delivery of replacement parts as satisfaction of its claim then the delivery of the replacement parts will be subject to the same conditions as for the delivery of the parts being replaced. The delivery dates will be calculated as from the time when the claim from MAPLAN for the delivery of the replacement parts was received by the supplier. Within the warranty period the supplier is obliged to make any required additional deliveries and services at the place of the initial delivery according to the Incoterms 2010 DAP (EU) / DDP (outside EU) unless otherwise agreed; in addition the supplier must carry out all repairs, settings and works required and make sure that the agreed performance standards are reached without incurring any additional costs of any kind to MAPLAN.

12. The applicability of article 377 UGG concerning the making of claims is expressly excluded. This means that MAPLAN has no obligation to make claims according to article § 377 UGB or other claims in relation to the expertise of the goods.

13. The supplier is obliged to assure the availability of spare parts for a period of at least 15 years effective from the date of delivery to MAPLAN; the price applicable for the spare parts will be the last listed price agreed to.

14. Furthermore the supplier will provide the best possible support to MAPLAN for solving problems and remedying faults.

15. The supplier must assume all expenses related to faults of the merchandise delivered (in particular costs for repair, transport costs, costs for deinstallation and installation, costs for service technicians employed by the supplier or by MAPLAN, costs for diagnostics, costs related to the delivery of spare parts as well as indirect costs related to faults or incompleteness of the merchandise delivered); this applies independently of the provisions of point VI and such costs are to be reimbursed to MAPLAN where applicable.

VI. Liability, product security, product liability and retention

1. The supplier will assume total liability for all damages incurred by MAPLAN through the delivery of services, staff members or other persons collaborating with the supplier (this will also include successive damages such as loss of profit) as well as for material damages and physical damages to persons according to Austrian law

2. In case where product faults in the delivered merchandise exposes MAPLAN to legal claims based on product liability or other regulations (for instance statutory regulations applicable in the country of the product destination), the supplier is obliged to compensate MAPLAN for the damages incurred and in the case of legal proceedings, to assist MAPLAN in its defense against claims from third parties.

3. Upon request from MAPLAN the supplier is obliged to inform MAPLAN in writing of who is the manufacturer of the products and who brought the products on the market. Furthermore, in the case of foreign products the supplier is obliged to specify the country of origin of the product and the importing company.

4. In the case of material faults or legal faults the supplier will take all appropriate actions to defend MAPLAN against claims from third parties. In cases where third parties make claims against MAPLAN related to the infringement of intellectual property laws, registered trademarks or patents concerning the goods delivered by the supplier, MAPLAN will notify the supplier of such actions. The supplier is obliged to compensate MAPLAN for the damages incurred by such actions and in case of legal proceedings to support MAPLAN in the defense of claims made by third parties.

5. The responsibility of MAPLAN and of third parties acting on behalf of MAPLAN will be excluded for financial damages related to light misdemeanor.

6. If there are several suppliers the responsibilities towards MAPLAN cannot be split between these and will be consolidated.

7. The rights of the supplier to retain its property or refuse the delivery of services will be excluded unless this would be incompatible with the law. Disagreements (in particular concerning the supplier's rights to payment or those related to claims) will not entitle the supplier to interrupt its services and stop deliveries.

VII. Environmental protection and security

The supplier undertakes to deliver only such products or services which are in compliance with the laws for environmental protection and security applicable in Austria; in particular wood packaging must be in conformity with the IPC guidelines. Dangerous products or substances are to be labeled according to the statutory requirements. The supplier is obliged to satisfy all legal provisions, the provisions of documents brought to its attention and all instructions provided by MAPLAN, in particular individual instructions regarding technical safety and the safety of persons (this applies regardless of whether such instructions have been given in writing, orally or otherwise).

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VIII. Breach of contract and cancellation

1. MAPLAN is entitled to cancel the contract without notice in cases where the supplier is to be held responsible for the non-observation of MAPLAN's General conditions of purchase or MAPLAN's General conditions of packaging and delivery; the same will apply if more than two legal procedures for forced execution have been made against the supplier or if the supplier is subject to legal proceedings for the liquidation of its assets. MAPLAN may at its discretion withdraw from the entire contract or only from parts thereof. In cases where MAPLAN is justified in withdrawing from the contract there are no more payment obligations towards the supplier. The above clause applies only insofar as it is compatible with the legal provisions for the protection of creditors.

2. In cases where the supplier risks being unable to deliver on time, said supplier must immediately inform MAPLAN, indicating the reasons and the foreseen date when the delivery can be made. Otherwise, MAPLAN shall be entitled to withdraw from the contract without any compensation or indemnity for costs incurred by the supplier.

3. MAPLAN is also entitled to withdraw from the contract if the delay in delivery or infringement of the contract was caused by acts of god. Acts of god exempt the supplier from repair to damages resulting from the non-fulfillment of its obligations or delays, providing the justifying circumstances have been notified to MAPLAN in a timely and exhaustive manner.

IX. Availability of materials

1. All materials and accessories (figures, forms, documents, programs, devices and tools) provided by MAPLAN remain its exclusive property and may only be used to prepare the orders submitted by MAPLAN. It is forbidden to transmit such materials to third parties unless written permission has been given to that effect.

2. The supplier is obliged to handle the materials and accessories provided by MAPLAN (figures, forms, documents, programs, devices and tools) with care; they must be immediately and completely returned to MAPLAN upon request.

3. In case where the materials and accessories (figures, forms, documents, programs, devices and tools) are destroyed or damaged by the supplier during processing they have to be repaired or replaced at the cost of the latter.

4. In cases where the supplier receives materials required to process the orders directly from a sub-supplier of MAPLAN, the supplier must check these materials in terms of their quality, functionality and the quantity delivered. The result of that check is to be communicated to MAPLAN in writing. In such context, transmission by fax or email is to be considered as satisfactory. Furthermore, upon request from MAPLAN test protocols are to be attached.

5. The supplier is obliged to check the materials and accessories provided by MAPLAN (figures, forms, documents, programs, devices and tools) with regard to their suitability for preparing the orders. In cases where these are not suitable MAPLAN is to be informed immediately.

6. In case where the supplier requires further materials, documents, information or other, the supplier must immediately inform MAPLAN in writing after having received the order. If such notification is not made immediately MAPLAN shall not be held partly responsible for a delivery delay.

X. Rights related to intellectual property and secrecy

1. The materials and the information provided to the supplier by MAPLAN (drawings, plans, specifications, norm sheets, models etc.) remain the property of MAPLAN and may only be used to prepare the orders. They must be kept secret. They may not be transferred to third parties and may not be used for purposes other than to prepare the orders. The supplier undertakes to take all necessary steps to prevent these from becoming known or used by third parties. They must be returned at any time upon the request of MAPLAN and in any case after the order has been delivered; copies must be destroyed and saved data must be deleted.

2. In particular the suppliers and sub-suppliers or our supplier may only obtain such information as is absolutely necessary to fulfill the orders and should be obliged to secrecy. The obligation for secrecy does not apply in cases where the information concerned was known to the supplier or the public at the time it was revealed to the supplier by MAPLAN.

3. In cases where intellectual property is required or useful for use of the merchandise MAPLAN will have the irrevocable right to use such intellectual property associated with the merchandise or service provided. MAPLAN has the right to delegate such usage rights to third parties or to grant sub-licenses if necessary for the commercialization, availability, use, maintenance or improvement of the product or service concerned (modified or not modified).

4. In cases where the product or service involves software or if it is actually software then standard software use will be granted to MAPLAN within the framework of the intended usage; such usage will include use in any system environment and may involve the transfer of the rights to usage. In addition, MAPLAN will have the right to make backup copies of the standard software, such backup copies of the standard software being part of compliant usage. Even without specific agreement to that effect, the user documentation, in particular the user manual and operator manual, will be considered as part of the delivery.

5. In cases where the product or service involves customized software or is represented by customized software (meaning software specifically made for the purposes of MAPLAN) then MAPLAN will have an exclusive, unlimited and not-transferable right to the usage of such

software (including extensive rights to adaptation and modification); MAPLAN will then also have the right to transfer the source code and object code in a machine legible format and in a format legible by persons.

6. Documents and also emails which have been transmitted by error to the supplier will be treated confidentially and returned or suppressed without delay.

7. For the entire period of the contract concerned and also after its expiry, the supplier must maintain the confidentiality of all information and documents received from MAPLAN; upon request from MAPLAN the information is to be deleted or returned immediately.

XI. Place of delivery

All products or services are to be delivered to the place expressly indicated in the order in compliance with the agreed Incoterm terms; unless otherwise specified the place of delivery will be 2542 Kottingbrunn, Maplanstraße 1.

XII. Applicable law, place of jurisdiction

1. The parties to the contract will attempt to find an acceptable agreement regarding all questions concerning the collaboration and the interpretation of the contract.

2. In cases where no agreement could be reached or where one of the parties does not voluntarily comply with the agreement, legal disputes on the basis of the contract concerned will fall under the exclusive jurisdiction of the competent commercial court of Vienna. Austrian law will be applicable, which applies in particular to the UGB code. Notwithstanding the above clause, MAPLAN reserves the right to file legal proceedings against the supplier in any other court, which may be legally competent.

3. In cases where there are differences between the German and the English version of the General conditions of purchase, the German version shall prevail.

XIII. Severability clause

In cases where a clause of the General conditions of purchase is legally invalid, this will have no effect on the other clauses. The invalid clause is to be replaced by a legally valid clause most representative of the economic purpose of the original clause.

XIV. Compensation for additional charges

1. In cases where additional charges have been incurred as a result of a claim or breach of contract with regard to the General conditions of purchase or the General conditions of delivery and packaging, MAPLAN will issue a debit note to the supplier.

2. In cases where no additional costs are claimed against the supplier in the form of a debit note such claims may be made by email within a time period of at most 4 working days. Claims made after such time cannot be considered.

Annex: List of currencies