



## General Terms and Conditions of Purchase

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### 1. GENERAL REMARKS:

- 1.1 The following General Terms and Conditions of Purchase shall apply to all orders placed by Tyrolit Schleifmittelwerke Swarovski KG, Tyrolit Construction Products GmbH and Tyrolit Holding GmbH (hereinafter referred to as "Tyrolit"), unless the order expressly specifies otherwise. Until they are modified, these Terms and Conditions of Purchase shall be applicable also to all further orders, even if no particular reference is made to this fact. The applicability of the supplier's general terms and conditions of business, irrespective of their nature, including without limitation terms and conditions mentioned in the supplier's offer or order confirmation, shall be excluded in any case, even if they are not inconsistent with these Terms and Conditions of Purchase and even if they were not expressly objected to, unless they were explicitly accepted by Tyrolit in writing.
- 1.2 Performance or silence on the part of Tyrolit shall not signify acceptance of the supplier's general terms and conditions of business. Divergent agreements, side agreements, confirmations and modifications of the Terms and Conditions of Purchase may only be made in writing and shall be valid exclusively on a case-by-case basis.
- 1.3 All offers submitted to Tyrolit shall remain binding upon the offerer/supplier for a minimum period of 4 weeks after receipt by Tyrolit; irrespective of what preparatory work was required in order to submit the offer to Tyrolit and such an offer shall not give rise to any claim for the placement of an order nor for remuneration.
- 1.4 All documents issued by the supplier shall contain the relevant order number and item number of Tyrolit. Deliveries, notices, invoices, etc. that do not contain these data shall be regarded as not having been received due to the impossibility of processing them.
- 1.5 If individual provisions of these Terms and Conditions of Purchase turn out to be invalid or unenforceable, the remaining provisions shall retain their validity to the full extent. In such a case, the invalid or unenforceable provision shall be replaced by a provision that comes as close as possible to the economic purpose of the invalid or unenforceable provision.
- 1.6 The supplier is aware of the fact that persons employed by Tyrolit or third parties whose services are used by Tyrolit are not entitled to give promises which differ from



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the contractually agreed principal obligations (such as delivery agreements, commitments regarding quality or quantity).

- 1.7 Tyrolit is entitled to modify the Terms and Conditions of Purchase. Tyrolit will inform the supplier about such modifications of the Terms and Conditions of Purchase and the date of the legal effectiveness of such modifications at least one month before the date of such effectiveness. The modification of the Terms and Conditions of Purchase shall take effect unless the supplier objects to the modification within one month after receiving the relevant information.
- 1.8 Tyrolit is entitled to correct obvious errors, such as errors in spelling or calculation in orders, acceptances of offers and similar documents at any time.

### **2. PLACING OF ORDERS:**

- 2.1 Orders shall only be legally binding upon Tyrolit if they are placed on the Tyrolit standard order forms or are sent via facsimile and are duly signed. Orders via e-mail are only legally binding if the e-mail is sent by a buying representative of Tyrolit and is signed with an electronically reproduced copy of the signature.
- 2.2 If an order placed by Tyrolit will not be objected to within 8 days in writing, this order shall be deemed accepted by the supplier without limitation.
- 2.3 The execution of purchase contracts may only be awarded to the supplier's subcontractors, in full or in part, after Tyrolit has given its consent in writing on a case-by-case basis. Any change of the suppliers of raw materials for the execution of the order and every change of the place of mining or production requires Tyrolit's express written consent. In case of non-compliance with this rule, Tyrolit shall not be obligated to accept deliveries or services and the consequences of non-performance shall take effect.

### **3. ORDER CONFIRMATION:**

- 3.1 The supplier shall mark orders placed by mail, facsimile, EDI or email, with a confirmation of receipt and a copy shall be returned to Tyrolit immediately. Reference is made to item 2.2.



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3.2 If the supplier objects to details of the order, Tyrolit reserves the right to cancel the order.

### **4. DELIVERY, TAKING DELIVERY, ACCEPTANCE:**

4.1 Unless otherwise stipulated in an order by Tyrolit deliveries shall be made delivered at place ("DAP" - Incoterms 2010). The date or period of delivery mentioned in the order refers to the arrival of the delivery at Tyrolit's plant at the place of delivery mentioned in the order; if no delivery place is mentioned, the works at Schwaz, Austria, shall be the place of delivery. Tyrolit is not obligated to take delivery of the goods before the agreed date of delivery or before the commencement of the agreed period of delivery. Unless otherwise agreed expressly and in writing, the supplier shall not be entitled to make partial deliveries or advance deliveries. In case of premature delivery, the period for payment shall only begin to run on the agreed date of delivery or at the start of the agreed period of delivery.

4.2 As soon as the supplier becomes aware that a timely delivery will be not possible or only partially possible, the supplier shall inform Tyrolit immediately, stating the reasons for such delay and its prospective duration. In case of delayed delivery, even if the supplier has fulfilled its obligation to inform Tyrolit, Tyrolit shall have the right to terminate the contract or to insist on delivery. In such a case, Tyrolit shall also be entitled to terminate the contract only with regard to any part of the delivery (irrespective of whether delivery has already been effected or not). Tyrolit shall further be entitled to cover its requirements elsewhere at the supplier's expense. In any case, further claims on the part of Tyrolit, including without limitation claims for damages, shall remain unaffected thereby.

4.3 Taking delivery of goods shall only be possible on working days, Monday through Thursday from 6.30 to 12.00 a.m. and from 1.00 to 3.30 p.m. as well as Friday from 6.30 till 12.00 a.m. and 1.00 to 2.00 p.m.

4.4 Delivery shall be effected with the proper accompanying documents (no invoices!) containing the complete order reference of Tyrolit. Without the relevant accompanying documents, the delivery shall not be considered as due performance of the order and shall therefore not be taken, but, at Tyrolit's option, be either stored or returned, in both cases at the supplier's risk and expense. The deliveries shall be packed properly and dispatched in accordance with the relevant forwarding instructions of Tyrolit, if



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any. Any damage resulting from non-compliance with such regulations shall be borne by the supplier.

- 4.5 The legally valid acceptance of the delivery and the passing of the risk shall only take place after examination and clearing by Tyrolit's incoming goods inspection department. Any previous confirmation of delivery or payment of the invoice shall not constitute acceptance on the part of Tyrolit, so that, in such a case, the right of later refusal of the delivery shall be reserved.

### 5. PRICES:

- 5.1 The agreed prices are fixed prices. Fluctuations in exchange rates and currency, as well as bank charges, shall be borne by the supplier.
- 5.2 Insofar as prices and terms are not already stipulated in Tyrolit's order, but are only mentioned at a later date, they shall only be valid and binding if they are expressly accepted by Tyrolit in writing.
- 5.3 The costs of transport, packing, insurance and other costs arising in connection with the delivery of the goods to the place of delivery indicated by Tyrolit shall be agreed in writing on a case-by-case basis.

### 6. INVOICES:

- 6.1 Invoices shall be sent individually as pdf document to the following email address: [kreditoren-at@tyrolit.com](mailto:kreditoren-at@tyrolit.com) Invoices concerning services or assembly shall be accompanied by approved time sheets duly confirmed by Tyrolit. Only invoices that fulfill the above mentioned criteria are deemed to be issued according to the contract and shall be processed by Tyrolit and cause the invoiced amount to become due for payment.

### 7. PAYMENT:

- 7.1 Insofar as no special agreement is made, the payment for goods and services accepted unobjected shall be effected, at Tyrolit's option, either within 14 days after Tyrolit has received the invoice and the goods, with 3% cash discount, or within



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90 days after Tyrolit has received the invoice and the goods. However a payment does not constitute confirmation of the conformity of the delivery with the agreement,

and therefore does not have any effect whatsoever on Tyrolit's claims in connection with the performance of the contract, such as, for instance, claims for compensation, right of termination, etc.

- 7.2 The Supplier shall under no circumstances be entitled to set off its obligations to Tyrolit against any claims it may have *against* Tyrolit.
- 7.3 In case of down payments supplier has to present an appropriate security (e.g. bank guarantee) on request. Payments made by Tyrolit shall be considered to have been agreed as being of stable value and therefore always represent a proportional payment of the total order value with reference to the date of the order.
- 7.4 Any assignment of supplier's claims against Tyrolit shall be invalid without Tyrolit's express written consent.
- 7.5 Tyrolit endeavors to make all payments on time. In case of a delay in payment on the part of Tyrolit for any reason whatsoever, default interests in the amount of 5% p.a., calculated from the 90<sup>th</sup> day after the receipt of invoice and goods, shall be considered as agreed. Any further claims for payment for this reason is excluded, except a lump sum of € 40.00,- for proven damages.

## 8. WARRANTY:

- 8.1 The supplier shall be fully liable for the execution of the delivery as agreed in the order and for compliance with all relevant statutory provisions and standards, in particular with regard to the regulations applying within the European Communities. The supplier shall equally be liable with regard to the products or product parts and/or services delivered or processed by the supplier and for those products or product parts and/or services that it has not created itself. The deliveries and services rendered shall have the usually expected and the stipulated qualities as well as the qualities mentioned in the directions for use, explanations, folders, advertisements and other information media that are accessible to the general public or to Tyrolit and shall be suitable for use in accordance with the nature of the transaction and the agreement in question.



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8.2 The warranty period shall be two years. It begins to run on the date of acceptance of the goods in accordance with item 4.5 of these Terms and Conditions of Purchase. However, in case of goods (raw materials) destined for further processing or

conversion by Tyrolit, the warranty period shall only commence on the date on which the goods or materials are used for that purpose. If Tyrolit does not exercise its right to terminate the contract in case of an unauthorized change of a supplier of raw materials, the warranty period shall be extended by 12 months. The defectiveness of

deliveries and services shall be assumed, subject to refutation, to have existed already at the time of delivery if the defect is discovered during the warranty period. Tyrolit shall give the supplier notice of defects in deliveries that were not objected to at the time of taking delivery as soon as such defects are discovered, but not later than by the end of the agreed warranty period, either verbally or in writing. The parties expressly agree that the obligation under commercial law of filing a complaint in respect of defects (sec. 377 of the [Austrian] "UGB" [Companies Code]) shall not apply.

8.3 In case of defects, irrespective of their nature and extent, Tyrolit shall have the right to claim from the supplier, at Tyrolit's own option, rescission of the contract, reduction of the purchase price or - in case of reparable defects – removal of the defect. Furthermore, Tyrolit shall have the right to effect repairs, or have them carried out by third parties, at the supplier's expense. All costs incurred in connection with the repairs, additional delivery or return of defective goods as well as the relevant risk shall be borne by the supplier. In case of a request for repairs, a maximum period of 4 weeks shall be regarded as reasonable, unless Tyrolit expressly stipulates otherwise in writing. The supplier shall be liable for the consequential damage resulting from the defect even if it is not at fault. If the supplier fails to repair the defect within the period granted for that purpose, Tyrolit shall have the right to claim, at its option, either rescission of the contract or reduction of the purchase price. In urgent cases and in case of a delay in repairing the defects on the part of the supplier, Tyrolit shall have the right, without granting any additional period of time, to effect the repairs at the supplier's expense (substituted performance).

8.4 The supplier shall, of its own accord, attach any storage and operating instructions to the goods delivered and, if necessary, expressly point out any further required measures in connection with the handling of the goods delivered.



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8.5 The supplier shall also be liable for the completeness and correctness of the data or information contained in certificates or test reports. The supplier confirms that the relevant Tyrolit standards as well as all laws and other rules and regulations in connection with the delivery or service are known to it.

8.6 Upon request, the supplier shall assign to Tyrolit the supplier's warranty claims against the supplier's predecessors in title ("*Vormänner*") if the defects in the goods delivered are due to such defective previous supplies. The warranty claims against the supplier shall not be affected by such an assignment.

### 9. LIABILITY:

9.1 The supplier shall be liable for all damage that has been done, as well as for its consequences.

9.2 The supplier is aware of the fact that an examination of raw materials before their conversion is only possible to a very limited extent at Tyrolit's works and that it is only at the point of checking the finished product that it can be ascertained whether flawless raw materials, auxiliary materials etc. have been delivered.

9.3 Therefore, if products of inferior quality are manufactured due to a defect in quality of the goods delivered, Tyrolit shall have the right – irrespective of whether the supplier is at fault for the defect or not – to take, at its own option, one of the following measures:

- a) either to deduct from the invoiced delivery the amounts granted by Tyrolit as an additional discount by comparison with flawless products when selling off products of inferior quality;
- b) or to return the raw or finished products to the supplier at the supplier's expense; in such a case, the supplier undertakes to reimburse Tyrolit for the production costs incurred, plus loss of profit;
- c) or, in case the defect is discovered during the manufacturing process as a result of spot checks, either to continue production and sell off the products as products of inferior quality, demanding compensation for the difference in price from the supplier, or to interrupt production and charge the supplier for the resulting loss of output, hours of standstill and loss of profit.

9.4 Should Tyrolit find itself unable to fulfill its contractual obligations due to the inferior quality of the goods or services provided by the supplier, the supplier shall indemnify and hold Tyrolit harmless in that respect.



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- 9.5 If, in spite of spot checks carried out before delivery to the customer, defects are not discovered by Tyrolit, but only become known to Tyrolit as a result of complaints from

Tyrolit customers, and if Tyrolit is liable for damages to such customers as a result, the supplier shall be obligated to indemnify and hold Tyrolit harmless.

- 9.6 At the request of Tyrolit, the supplier shall, at the time of accepting the order, submit evidence of having taken out a third-party liability insurance policy in a sufficient amount and corresponding to the extent and the possible consequences of such

liability. If the supplier fails to submit such evidence, Tyrolit shall have the right to cancel the order, in full or in part, without granting a grace period.

### **10. PRODUCTION DOCUMENTATION, DRAWINGS, FORMS, TOOLS:**

- 10.1 Samples, models, drawings, forms, tools, printing plates, plans and other auxiliary material shall remain Tyrolit's intellectual and material property of which Tyrolit shall be free to dispose at will. The supplier may use such auxiliary material exclusively for carrying out Tyrolit's orders and it shall not be made accessible or handed over to persons not employed in the supplier's plant or to third persons. The supplier shall take all imaginable measures required in order to comply with these obligations of secrecy.

- 10.2 Samples, models, drawings, forms, tools, printing plates and other auxiliary material created by or on behalf of the supplier in connection with a delivery order given by Tyrolit shall also be the property of Tyrolit. All processing or converting of goods or materials by the supplier shall be carried out in the name of Tyrolit; the supplier already declares at this point that will be holding such goods or materials for Tyrolit until they are delivered to Tyrolit. The supplier shall be obligated to hand over to Tyrolit, of its own accord, all vouchers and documents required in order to supply evidence of title to third persons.

- 10.3 All samples, models, drawings, forms, tools, printing plates and other auxiliary material owned by Tyrolit, including without limitation those mentioned in items 10.1 and 10.2, shall be returned to Tyrolit, at the supplier's expense and risk, after the delivery or service in question has been effected, unless otherwise agreed in writing. If insolvency proceedings (bankruptcy, settlement proceedings, etc.) are instituted or





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a petition in bankruptcy is dismissed due to lack of sufficient assets to cover the costs of the proceedings, the supplier shall be obligated to promptly inform Tyrolit of such a circumstance, and to take all necessary and useful measures in order to enable

Tyrolit to enforce its rights to the separation and recovery of assets not belonging to the bankrupt's estate.

### **11. INDUSTRIAL PROPERTY RIGHTS:**

11.1 The supplier shall indemnify and hold Tyrolit harmless with regard to all patent law and other disputes in connection with the deliveries made by the supplier, particularly in connection with industrial property rights, and the supplier shall compensate Tyrolit

for all costs, expenses and other disadvantages resulting from the restricted use of the goods delivered, irrespective of whether the supplier is at fault or not.

### **12. PLACE OF DELIVERY, APPLICABLE LAW AND PLACE OF JURISDICTION:**

12.1 The place of delivery for the goods or services shall be the address set out in the order; in case no such address is given, the place of delivery shall be the works at Schwaz, Austria.

12.2 Substantive Austrian law shall apply exclusively. The (Austrian) "IPRG" (Act on Private International Law) and other conflict of laws provisions are expressly excluded. The UN Convention on Contracts for the International Sale of Goods ("UNCISG") shall not be applicable.

12.3 The place of jurisdiction for all disputes arising in connection with the business relationship between the supplier and Tyrolit, in particular disputes out of or in connection with these Terms and Conditions of Purchase, shall be the competent court at Innsbruck, Austria. At Tyrolit's option, however, Tyrolit shall have the right to file suit against the supplier with any other court having jurisdiction over the supplier, either in Austria or abroad.