

Our order is subject to the exclusive application of our General Terms and Conditions of Purchase and Order accessible on the following website: <http://www.dewertokin.de/terms-and-conditions.php>

General Terms and Conditions of Purchase and Order

General Terms and Conditions of Purchase and Order (“**Purchase Conditions**”) of **Okin America, Inc.** (in the following “**Purchaser**”) for use vis-à-vis the enterprises (in the following “**Vendor**”).

1. Applicable Terms

1.1 The legal relationship between the Purchaser and the Vendor in respect of supply of the goods or other services (in the following together “**Goods**” or “**Delivered Goods**”) shall be governed exclusively by these Purchase Conditions, provided however, that the Parties may agree on additional or deviating terms in writing.

1.2 The Purchaser expressly objects to conflicting terms. Acceptance without reservation of the Goods as well as any payment made without express objection by the Purchaser shall not be construed as consent to deviating or conflicting terms.

1.3 These Purchase Conditions shall also apply to all future legal relationships between the Purchaser and the Vendor concerning supply of the Goods.

2. Purchase Contract

2.1 All purchase contracts (including the orders and acceptances), termination for convenience of deliveries and all other notices in connection with the respective delivery shall be made in writing. The written form requirement is also deemed complied with if communications are sent by remote data transmission or facsimile transmission.

2.2 If the Vendor does not accept an order within two weeks of receipt thereof, the Purchaser may revoke its order. Termination for convenience of deliveries shall be confirmed without undue delay and shall be binding at the latest after the Vendor has not objected to them within one week of receipt.

2.3 Insofar as this is reasonable for the Vendor, the Purchaser may demand changes to the Goods with regard to construction and design. In this case the consequences, in particular any increase and decrease of costs as well as delivery dates, shall be agreed upon in a reasonable manner.

2.4 The Vendor may use the subcontractors for the entire or material parts of the production only with the express prior written consent of the Purchaser.

2.5 Insofar as the Parties agree upon delivery schedules and/or quantity frameworks for the future, the Purchaser shall only be obliged to purchase within the quantities scheduled for the respective following period. This purchase obligation shall be fulfilled through orders according to Section 2. The Vendor may make arrangements for stocks/materials resulting from the delivery schedules and/or the quantity frameworks for a maximum of two further months, unless expressly otherwise agreed by both Parties. The Vendor shall automatically take into account changes to the delivery schedules and/or quantity frameworks in its production plans and arrangements for stocks/materials.

2.6 The Vendor warrants that it shall comply with all applicable laws, prevailing industry standards, regulations and requirements in connection with the import, sale or use of the Goods in the United States, Canada, and Mexico (the “**Territory**”) to the Purchaser, and shall provide all the documents required for export and/or import of the Goods, in particular their certificates of origin, export or import licence.

3. Prices, Payments and Assignment

3.1 The prices agreed upon are fixed prices and include all incidental services (such as including costs for packaging, transport and customs clearing formalities, if any), unless expressly otherwise agreed by both Parties in the order and acceptance or in other written form.

3.2 Unless otherwise expressly provided in writing, all the prices shall be the ones under “DDP” (Incoterms 2010) to the Purchaser’s designated plant or the agreed destination. Sales, use or excise taxes are not included.

3.3 Invoices shall be executed in two copies and shall include the order number, article name, unit of measurement, quantity, unit price and total purchase price.

3.4 Unless otherwise expressly agreed in writing, the payment shall be made upon receipt of the satisfactory delivery as well as the relevant official invoice, at the Purchaser's discretion, either within 20 days less 3% discount or within 60 days without any deductions.

3.5 The assignment of Vendor's payment claims and their collection through third parties requires the prior written consent of the Purchaser which may not be unreasonably withheld.

4. Delivery and Packaging

4.1 Unless expressly otherwise agreed in writing, deliveries shall be made to the Purchaser's designated plant or the agreed destination under "DDP" (Incoterms 2010) and passing of risk occurs upon physical transfer to the Purchaser in the aforementioned place.

4.2 Partial delivery requires the prior written consent of the Purchaser. The Purchaser reserves the right to accept the individual cases of the surplus or short deliveries and shall also have the right to refuse acceptance of the early deliveries without falling into default of acceptance.

4.3 The notice of delivery shall include at least the description of the article, the article number, quantity, date, delivery address and time as well as the Purchaser's purchase order number.

4.4 The Vendor shall also provide the Purchaser with the documents and data of the Goods, including but without limitation to country of origin, export or import licence (if any).

4.5 If the Delivered Goods contain the hazardous materials, the Vendor shall provide the Purchaser with the up-to-date material safety data sheet and mark the Goods according to the prevailing laws and regulations in the Territory.

4.6 The Vendor warrants that the packaging withstands the mechanical and climatic strains during the transportation as well as storage, and conforms to any special requirements set out by the Purchaser from time to time, and that the Goods shall be packaged properly to be protected from being damaged or impaired otherwise.

5. Delivery Terms

5.1 Delivery times and dates agreed upon are binding and time is of the essence in the performance of this Agreement. The receipt of the Goods at the Purchaser's plant or the agreed destination shall be relevant with regard to the compliance with the delivery dates and times.

5.2 If the Parties do not agree on "DDP" for deliveries, the Vendor shall prepare the Goods for delivery in good time taking into account the usual times for loading and shipping.

5.3 The Vendor shall inform the Purchaser without undue delay in writing in case circumstances occur or become apparent due to which the agreed delivery dates and times as well as the agreed quality cannot be met.

6. Delay of Delivery

In case of delay of delivery, Purchaser shall be entitled to any and all remedies available to it under applicable laws, including but not limited to the Uniform Commercial Code. The Vendor shall be fully liable for extra cost and all damages and losses due to the late delivery if the agreed delivery deadlines are not met. Acceptance of delayed deliveries without reservation shall not be deemed a waiver of such claims.

7. Defects as to Quality and Defects in Title, Quality Warranty Period, Violation of Third Party Rights

7.1 Vendor warrants that it will convey good and marketable title to the Goods free from any lien, claim or encumbrance. Vendor further warrants that any Goods delivered hereunder, shall: (i) comply with the applicable Product descriptions and specifications; (ii) be merchantable and fit for the particular purpose for which purchased by Purchaser; (iii) comply with all rules, regulations and requirements, for import, transportation, storage, packaging, use or application of the Goods. Vendor further warrants that the purchase, sale or intended use of the Goods is not in violation of any patent, trademark, design patent or other intellectual property rights.

7.2 Acceptance is effected subject to the reservation of an examination for faultlessness, in particular also including accuracy and completeness. The Purchaser shall notify the Vendor of defects of delivered goods without undue delay in writing as soon as the defects have been detected in the course of ordinary business. Insofar, the Vendor waives the objection of belated notification of defects.

7.3 If a defect becomes apparent within _6 months after taking delivery of the Delivered Goods by the Purchaser, it will be refutably assumed that the defect already existed at the time of taking delivery of the Delivered Goods, unless such an assumption is incompatible with the nature of either the object of delivery or the defect.

7.4 The Purchaser may determine the form of subsequent performance free of charge, or other remedy (such as discount in payment or cancellation of the purchase contract), at his free discretion; the Vendor may refuse the subsequent performance the Purchaser selected only if it is only possible at disproportionate expense.

7.5 The Purchaser may remedy a defect himself or through a third party at the Vendor's cost after a reasonable time period set for the Vendor to provide subsequent performance has expired without success, or in urgent cases, especially to ward off acute danger or to prevent damage, unless the Vendor is entitled to refuse the subsequent performance. In case of substantial urgency where it is impossible to inform the Vendor of the defect and of the impending grave damage, and to set even a short time period for subsequent performance, setting a time period for the subsequent performance is not necessary.

7.6 The warranty period for defects as to quality shall be 36 months after taking delivery of the Delivered Goods by the Purchaser from the Vendor, however not earlier than 24 months after delivery of the final Goods to the end-customers of the Purchaser. In the event of occurrence of the quality problem in the Goods, the Vendor shall be obliged to the subsequent performance at the discretion of the Purchaser, free of charge.

7.7 Supplier shall at all times comply with applicable laws and regulations, including but not limited to anti-kick-back provisions, use of conflict raw materials, labor provisions, including but not limited to freely chosen employment and child labor, import restrictions and federal laws on international trade. In addition, Supplier agrees at all times to maintain and follow ethical business practices with respect to human resources, labor practices, occupational health and safety practices and fair trade practices and monitor such practices by audits and inspections as warranted under the circumstances and provide written reports and assurances on the foregoing Purchaser at any time upon request.

7.8 Irrespective of fault, the Vendor shall be liable for claims due to the violation of third party rights, including ownership or filings for industrial and intellectual property rights (in the following together "**Third Party Rights**") resulting from the contractual use of the Delivered Goods. The Vendor shall indemnify the Purchaser and the Purchaser's customers against all claims resulting from the violation of the Third Party Rights. The Vendor is aware that the Purchaser's Goods are used worldwide.

7.9 The Vendor shall not be liable for infringement upon Third Party Rights insofar as he has produced the Delivered Goods according to drawings, models or other descriptions or specifications provided by the Purchaser and neither knew nor should have known that third party rights are violated thereby.

7.10 The Parties shall inform one another of the violations of Third Party Rights, corresponding risks and alleged violations as soon as they become known to the Parties and shall provide one another with the opportunity to defend against third party claims amicably.

8. Product Liability and Insurance

8.1 Vendor agrees that it shall indemnify, defend and hold the Purchaser and its corporate affiliates, directors, officers, employees and agents harmless against and from any and all claims, recalls, liabilities, damages and expenses incurred or to be incurred which may be brought against Purchaser arising or alleged to have arisen from the death or injury of any person, damage to any property or any other loss which resulted or is alleged to have resulted from any theory of law commonly known as "Product Liability".

8.2 Notwithstanding the above, the Purchaser shall have the right, but not the obligation, to participate as it deems necessary in the handling, adjustment or defense of any such matter. If Purchaser elects to participate in its defense, Vendor shall indemnify the Purchaser for set defense costs and expenses. Vendor shall not enter into any settlement or compromise of any claim without the express written consent of Purchaser.

8.3 Vendor shall, at all times, carry general liability insurance, including but not limited to the product liability risk in an amount of not less than US\$ 5 Million per occurrence and US\$ 10 Million in the annual aggregate and shall add Purchaser as additional insured under any such policy. Liability insurance shall be provided by US chartered or US domiciled reputable

insurance carriers with a rating of AA or better. All policies shall be written on an occurrence basis and shall provide that Purchaser be noticed in writing by the insurance carrier not less than ninety (90) days prior to any expiration or termination of the underlying insurance policy.

9. Retention of Title

The Purchaser expressly objects to any security interest or retentions of title by the Vendor, and the retention of title by the Vendor requires the express agreement in writing in order to be valid.

10. Supplies by the Purchaser

10.1. The supplies provided by the Purchaser to Vendor for purpose of fulfilment of the purchase contract (“**Supplies**”) remain in the Purchaser’s ownership and may only be used as contractually agreed. Processing or transforming of the Supplies by the Vendor are carried out on behalf of the Purchaser.

10.2 If the Supplies are irrevocably mixed with other items not belonging to the Purchaser, the Purchaser shall acquire the joint title to the new item corresponding to the value of the Supplies compared to the other mixed items at the point of time of processing.

11. Production Tools

11.1 Purchaser remains the owner of Supplies such as models, matrices, molding tools, patterns, tools or other goods (in the following “**Production Tools**”). Production Tools which the Vendor purchases or manufactures to fulfil the delivery contract with the Purchaser at the Purchaser’s cost shall pass into the ownership of the Purchaser. Intellectual and industrial property rights in the Production Tools shall belong to the Purchaser. The Vendor shall use the Production Tools exclusively for the fulfilment of the purchase contracts with the Purchaser and shall handle them with the due care of a prudent business man.

11.2 At any time, upon Purchaser’s request for which he needs no reasoning, Production Tools shall be returned to the Purchaser without undue delay. Production Tools which will remain with the Vendor after delivery of the last Goods produced therewith may only be destroyed after prior written consent by the Purchaser. The Vendor may demand that the Purchaser takes back the remaining Production Tools.

12. Confidentiality

12.1 The Parties will maintain strict confidentiality on all operational and technical information disclosed or otherwise obtained due to the legal relationship generally not known to the public, and will treat such information as confidential for the term of this Agreement and for a period of five (5) years thereafter, provided that any confidential information arising to the level of a “Trade Secret” as defined under applicable law, shall be kept confidential indefinitely for such time as such confidential information remains a “Trade Secret”. The Vendor shall impose corresponding confidentiality obligations on third parties who need to obtain knowledge or access to such business and trade secrets (such as employees, subcontractors).

12.2 Production Tools, drawings, outlines, construction data and similar objects, which are provided by the Purchaser, may not be provided or otherwise made accessible to unauthorised third parties; they may only be provided to the subcontractors of the Vendor after agreement on corresponding confidentiality obligations. Copying such objects is only permitted within the scope of operational requirements and the applicable laws after the prior written consent of the Purchaser.

13. Rescission and Termination

13.1 In addition to all rights to termination under applicable law, the Purchaser shall have the right to cancel or terminate the purchase contract with immediate effect, if

- a) the Purchaser has ceased the supply to its customers;
- b) there is or threatens to be a fundamental deterioration to the financial circumstances or the production and business situations of the Vendor, which shall result in that the performance of the supply to the Purchaser is in jeopardy;
- c) the Vendor enters into bankruptcy, liquidation, dissolution, comparable debt settlement or the similar procedures according to the applicable laws;
- d) any Force Majeure event causes the failure to continue performing the purchase contract, which shall last for 30 days;

- e) the Vendor is in violation of its obligations of supply to the Purchase, failing to rectify it upon receipt of the written notice of default from the Purchaser; or
- f) other circumstances as prescribed in the applicable laws and regulations.

13.2 If the Vendor rendered part performance, the Purchaser shall only have the right to cancel the whole purchaser contract if the Purchase has no interest in aforementioned part performance.

13.3 The additional statutory rights and claims shall not be limited and excluded by the regulations in this Section 13.

14. Force Majeure

Either party shall be reliable for any delays or failure to perform hereunder when such delay or failure is directly or indirectly caused by or in any manner arises from fire, floods, accidents, civil unrest, acts of God, force majeure, war, terrorism, governmental interference, embargos or strikes whether or not authorized by law or by any other causes beyond such party's control ("**Force Majeure**"). Force Majeure shall be acknowledged only if it has a direct impact on the fulfillment of these Purchase Conditions. The Parties shall inform one another of events of Force Majeure as far as reasonable without undue delay and will adjust their respective obligations to the changed circumstances in good faith.

15. Final provisions

15.1 This Agreement shall be governed by and construed under the laws of Delaware, USA, without regard to its provisions on conflicts of law. The UN Convention on the International Sale of Goods shall not be applicable hereunder.

15.2 Any controversy or claim arising out of or relating to this Agreement, or the breach hereof, shall be submitted to and be finally resolved by arbitration, to be conducted by the American Arbitration Association ("AAA"), with such arbitration to be held in Atlanta, Georgia in accordance with the AAA's International Arbitration Rules then in effect. Each party hereby irrevocably agrees that service of process, summons, notices as other communications related to the arbitration procedure shall be deemed served and accepted by the other party five (5) working days after having been mailed by first class registered mail, return receipt requested, postage prepaid, to the other party or if actually received by the other party. The arbitration shall be conducted by one arbitrator, as selected by the AAA. Any award or decision rendered in such arbitration shall be final and binding on both parties, and judgment may be entered thereon in any court of competent jurisdiction if necessary. Except as may be provided to the contrary herein, each party hereto shall pay any and all expenses incurred by such party in connection with such arbitration proceeding, unless otherwise determined, by the arbitrator.

15.3 Notwithstanding subsection 15.2 to the contrary, Purchaser may seek injunctive relief against Vendor at any court of proper jurisdiction with respect to any and all preliminary injunctive or restraining procedures pertaining to this Agreement or the breach thereof. Any provisions to the contrary herein notwithstanding, the law applicable in the jurisdiction of such court shall apply with respect, but limited to, all such preliminary injunctive or restraining procedures.

15.4 These Purchase Conditions shall to the greatest extent possible be interpreted in such a manner as to comply with the applicable laws, but if any provision hereof is or becomes invalid or unenforceable or if there is an omission, the remaining provisions of these Purchase Conditions shall remain to be binding upon the Parties. The Parties hereto agree to replace any such invalid or unenforceable provision by a valid one which comes as close as possible to the original purpose and intent of the invalid or unenforceable provision. In the event of an omission or amendment, both Parties shall conclude the supplementary agreement in any writing form.
