

Purchasing Conditions

1. General

- 1.1 The following conditions only apply to persons who act in their capacity as commercial or self-employed businessmen (entrepreneurs) upon contract-making, and to legal entities under public law and public-law special funds.
- 1.2 The present Purchasing Conditions shall be applicable to all orders placed by Buyer. Any sales or delivery conditions to the contrary are expressly excluded. Any modifications or amendments to the present Purchasing Conditions shall not be binding unless they have been confirmed in writing by Buyer.

2. Purchase Orders and Confirmations of Order

- 2.1 Orders shall not be binding unless they have been placed in writing. Orders placed and any other agreements made verbally or by telephone shall be confirmed in writing by Buyer in order to be valid.
- 2.2 All orders as well as the prices and delivery times shall be immediately confirmed by Supplier. The order shall be binding upon Buyer for a term of two weeks as of the day that follows the day on which the order was placed. Any extensions of this term shall be subject to an agreement.

3. Delivery Term and Delivery Dates

- 3.1 The agreed dates and delivery terms shall be binding. No reminder must be given if Supplier is in default. The delivery date or the delivery term shall be deemed to have been complied with if the goods are received on time in Buyer's factory unless another delivery address has been specified. If no "free" delivery has been agreed, Supplier shall make the goods available to us in time, with due regard to the to the time normally required for loading, and hand them over to the designated carrier.
- 3.2 If the agreed delivery date is not complied with for reasons for which Supplier is responsible, Buyer shall be entitled, notwithstanding any additional legal remedies it may have, to cancel the agreement after having granted a reasonable grace period of max. two weeks and threatened to reject delivery. Buyer shall be entitled to obtain substitute delivery from third parties and/or demand damages for non-performance. Buyer shall be entitled to reimbursement of all additional cost incurred by us as a result of delayed deliveries or performances for which Supplier is responsible. Acceptance of a delayed delivery or services does not imply a waiver of claiming damages that have been or will be caused by the default.
- 3.3 In the event of non-compliance with the agreed delivery term, Buyer shall also be entitled to payment of a contractual penalty of 0.1 % per workday, but no more than 5% of the contract value in the aggregate. The right to claim a penalty need not be expressly reserved when the goods or services are received or accepted. Any additional claims for damages shall not be affected. Supplier shall inform Buyer immediately within three workdays of any difficulties foreseen with respect to its production process or supply with its raw materials and the occurrence of circumstances which are beyond its control but will presumably prevent it from delivering in time and with the agreed quality .
- 3.4 The values determined by Buyer's inspection of incoming goods with respect to quantities, weights and measures shall be decisive provided that no other proof is given.
- 3.5 The delivery of higher or lower quantities as well as partial and advance deliveries shall require Buyer's approval.

- 3.6 Shipping shall be at Supplier's risk.
- 3.7 Delivery shall be made freight or postage prepaid. The packaging costs shall be borne by Supplier.
- 3.8 A transport insurance in Supplier's favor shall be covered by Buyer provided that Supplier bears the transport risk.
- 3.9 The provision that Buyer is exempted from forwarding, logistics and warehousing insurance shall absolutely be observed.

4. Passing of Risk

- 4.1 Supplier shall bear the risk of damage to or loss of the goods until receipt of the goods by Buyer or Buyer's agent in the place to which the goods are to be delivered pursuant to the order.
- 4.2 If the delivery and assembly performance is provided by Supplier in Buyer's factory or at third parties', the risk shall not pass to Buyer unless the delivery/performance has been accepted.

5. Prices

Unless agreed otherwise in writing, the agreed prices shall be firm fixed prices until delivery.

6. Supplier's Insolvency

- 6.1 If Supplier is insolvent, Buyer shall be entitled to retain reasonable collateral, but at least 10% of the agreed price until the end of the limitation period for warranty claims.
- 6.2 Supplier shall assign any warranty claims it may have against its suppliers to Buyer. Buyer may disclose this assignment if Supplier becomes insolvent.
- 6.3 In addition, Buyer shall be entitled to cancel any orders relating to deliveries not yet made until that point of time.

7. Invoicing and Payment

- 7.1 Invoices shall be submitted by Supplier in duplicate.
- 7.2 Payment shall be made when all deliveries or services have been completed and the invoice has been received. (also refer to Sect. 11)
- 7.3 If payment is made within 14 days after billing, a 3% cash discount shall be deemed to have been agreed.
- 7.4 Otherwise, payment shall be made net cash within 60 days of receipt of the invoice and completion of delivery.
- 7.5 Payments made by Buyer shall not be interpreted as Buyer having recognized the delivery or services as being compliant.

8. Warranty, Complaint of Defects, Duty to Inspect and Complain

- 8.1 In the event of defects and absence of warranted properties, including the operating values, operating points, performance parameters specified by Buyer as well as the relevant data in Buyer's specifications and the characteristic diagram underlying the rating which is provided in the catalog, Buyer may, in its own discretion, demand rescission, reduction of the purchase price, substitute delivery, remedial action on location or cancel the order in which case it shall be entitled to claim damages for breach of contract. Any other claims for damages shall not be affected.
- 8.2 If a defect is present, Supplier shall also bear the costs of inspection and determination of the defect, notwithstanding any other, additional claims of Buyer.
- 8.3 Buyer shall be entitled to correct any defects at Supplier's expense and without prior notification if immediate correction of defects is justified by Buyer's special interest or if there is a risk that correction of defects by Supplier would cause higher costs than correction of defects by Buyer, or if correction of defects by Supplier would result in delays which would make it more difficult for Buyer to comply with its obligations vis-à-vis third parties.
- 8.4 Buyer may return any goods that have been delivered in an incompliant condition at Supplier's expense and risk.
- 8.5 Supplier warrants that it will carefully inspect the goods before they leave its factory. Therefore, it waives compliance with the duty to inspect and to complain normally to be observed by merchants (Commercial Code - HGB - Sections 377 *et seq.*).
- 8.6 The warranty period with respect to any of the claims listed in Subs. 8.1 hereof shall be 30 months unless longer warranty periods are stipulated by law.
- 8.7 With respect to such claims, the statute of limitations shall be 6 months as of the complaint of the defect. However, it shall not terminate earlier than the warranty period.

9. Supplier's Liability

- 9.1 Buyer shall be entitled to reimbursement of all damages that have been caused by Supplier in connection with the delivery. This shall be applicable, in particular, to material wasted and wages expended without any benefit due to hidden damages as well as increased cost incurred in order to comply with Buyer's own delivery dates and other consequential harm caused by a defect. This duty to compensate Buyer shall not be applicable if Supplier can prove that it is not guilty of default, unless it is liable for defects by law even without default on its part.
- 9.2 Where the replacement of a whole series of contract products or of Buyer's products in which the contract products have been incorporated becomes necessary as a result of epidemic failure of a product, for example, because fault analysis would be inefficient, impossible or unreasonable in the specific case, Supplier shall also reimburse Buyer for the costs incurred with respect to the part of the series concerned that has no technical defect.
- a. Where a defect originating from Supplier's performance range results in Buyer's manufacturer's liability, Supplier shall hold Buyer harmless against such manufacturer's liability. It shall assume all costs arising from manufacturer's liability, including all possible costs related to a recall, if any.
- b. Supplier shall also be liable for all damages resulting from absence of or deficiencies in precautions taken.

- c. If Supplier is allowed to use, process or work on plants or plant sections, its liability for damages to the plants or plant sections belonging to Buyer or third parties shall not be affected.

10. Material, Manufacturing Tools, Drawings etc. Provided by Buyer

- 10.1 Any materials or manufacturing tools as well as any drawings, models, samples, moulds, gauges etc. provided by Buyer shall remain its property. Supplier shall be liable for any destruction, loss, deterioration or damage suffered by the same to the extent that it is responsible in this respect.
- 10.2 Without Buyer's approval, any materials or manufacturing tools provided by Buyer shall not be forwarded to third parties, sold, pledged or used for any other purpose whatsoever. The goods manufactured using these materials or manufacturing tools shall be exclusively delivered to Buyer.
- 10.3 In the event that Buyer reimburses Supplier for the cost of producing any manufacturing tools and moulds, these items shall become Buyer's property on the basis of the agreed *constitutum possessorum*. For as long Supplier is in possession of these items, it shall keep them in a safe place as part of its duty to take due care. The 2nd sentence of Section 9.1 shall apply, *mutatis mutandis*. It shall ensure sufficient insurance coverage.
- 10.4 In the event that only proportionate costs of the manufacturing tools are paid, the parties shall become joint owners thereof in proportion to the cost borne by each of them. Joint ownership shall be in accordance with the agreed *constitutum possessorum*. Supplier shall inform Buyer of any third-party claims with respect to the reference property within two workdays of becoming aware of such claims.
- 10.5 If Buyer assumes a proportionate cost share, it shall become a joint owner in accordance with the proportionate costs assumed by it, unless Buyer provides compensation for the balance between the proportionate costs and full costs.

11. Documentation

The documentation, service instructions, test certificates and other manuals necessary for operating machines and processing materials shall be delivered in German language together with the goods and shall be an integral part of the delivery.

12. Severability

In the event that a provision of the present Purchasing Conditions or any other agreements made should be or become invalid, the validity of the remaining provisions or agreements shall not be affected.

14. Governing Law, Place of Performance and Jurisdiction

- 14.1 The laws of the Federal Republic of Germany shall be applicable hereto.
- 14.2 The place of delivery specified by Buyer shall be the place of performance of all deliveries and services. Buyer's place of business and any place in which Buyer maintains a bank account with a financial institution shall be the place of performance for any payments.
- 14.3 All disputes shall be settled by the court that has jurisdiction for Buyer's place of business. However, Buyer may also sue Supplier at its place of business.