

## Terms & Conditions of Purchase

### English translation of German "Einkaufsbedingungen"

This document serves as orientation for non-German speaking suppliers. The legally binding document is the German version "Einkaufsbedingungen".

#### 1. Scope of application

- (1) The Corporation within the meaning of the following terms and conditions of purchase is the company named on the letterhead of the negotiation protocol/order.
- (2) The supply contracts between the Corporation and the Supplier (hereinafter also referred to as the Contractor) shall be governed exclusively by these Terms and Conditions of Purchase. Contradictory terms and conditions of the Contractor or terms and conditions of the Contractor deviating from these Terms and Conditions of Purchase shall not become part of the Contract unless the Corporation expressly agrees to them in writing. This shall also apply if the Corporation accepts the delivery without reservation in the knowledge of conflicting or deviating conditions of the Contractor.
- (3) The terms and conditions of purchase shall only apply to companies within the meaning of § 14 BGB (German Civil Code). They shall also apply to all future transactions with the Contractor.

#### 2. Purchase orders

- (1) Purchase orders must be made in writing and must be confirmed immediately in writing by the Contractor. The content of the written order of the Corporation shall apply exclusively. Verbal orders, amendments or supplements to orders shall only be binding if confirmed in writing by the Corporation. The written form shall also be deemed to have been complied with in the case of transmission in electronic form or in text form. If the Contractor does not accept an order within a period of three working days after receipt of the order, the Corporation shall be entitled to revoke the order prior to receipt of the Contractor's declaration of acceptance.
- (2) The preparation of offers by the Contractor shall be free of charge for the Corporation. In his offer, the Contractor shall comply with the specification and wording of the Corporation's inquiry. In the event of deviations, the Contractor shall expressly and separately point this out.
- (3) Additional services not included in the scope of the purchase order may only be performed if they have been commissioned in writing by the Corporation prior to the start of performance. Supplementary offers shall be calculated on the basis of the main purchase order. All conditions agreed with regard to the main purchase order shall also apply to supplementary offers. At the Corporation's request, the Contractor shall be obliged to disclose the calculation of the main order as well as the supplementary offers.

#### 3. Withdrawal before delivery

The Corporation can withdraw from the contract at any time before handing over the goods by written declaration. In this case, the Contractor may, if he cannot use the goods for other purposes, demand reimbursement of the expenses incurred up to the rescission.

#### 4. Terms of payment

- (1) The prices stated in the purchase order are binding and include all taxes, customs duties, packaging, transport and unloading costs as well as insurance up to the place of receipt of the Corporation (delivery address). The prices are to be understood as net prices and are subject to the statutory value added tax applicable at the time.
- (2) The prices are fixed prices unless the Contractor shows a price reduction in his price list in the period between the order and the delivery. If the price newly stated in the price list is lower than the agreed price, the lower price shall apply. Insofar as the quantity ordered from the Contractor is only determined in terms of order with a magnitude, any shortfall in quantity of up to 25% shall not entitle the Contractor to price increases. In the case of additional quantities, the right exists to place follow-up orders at the same price.
- (3) In the case of deliveries of machines or equipment, the Contractor shall undertake the installation and the commissioning at the Corporation's request. If the necessary equipment is provided by the Contractor, the costs incurred shall be stated and invoiced separately; otherwise they shall be deemed to be included in the offer. If additional development work is required from the Contractor in order to execute an order, the Corporation shall bear the corresponding costs only after prior written agreement.
- (4) Insofar as the Contractor provides processing, measuring and testing equipment and gauges, the tool costs incurred for these must be stated separately in the quotation and invoiced separately, otherwise they shall be deemed to be included in the quotation. Only calibrated measuring and testing equipment and gauges may be used.

#### 5. Terms of payment

- (1) Invoices shall be submitted to the invoice address stated in the order in duplicate and in good time. Invoices may only be issued by the Contractor. The Corporation shall only be obliged to process invoices if they contain the order or order number and the item number as stated in the order, if they are accompanied by a suitable proof of performance, if the place of receipt is listed and if the statutory value added tax is stated. In addition, the invoice must meet the

requirements of § 14 UStG. Invoices must be issued in the agreed currency. If the invoice does not meet the aforementioned requirements, the Corporation shall not be responsible for any delay in payment.

- (2) Payments shall be made by bank transfer after performance of the service or partial performance and receipt of the invoice or partial invoice by the Corporation within 21 days less 3% discount, within 30 days less 2% discount, within 60 days without discount, unless otherwise agreed. The discount deduction refers to the respective gross invoice amount.
- (3) The payment/discount periods shall commence upon receipt of the verifiable invoice corresponding to the stated prerequisites at the invoice address stated in the order. In order to comply with the discount period, it is sufficient to issue the transfer order to the Bank within the period. Advance payments shall not be made.
- (4) As a rule, payment for claims of the Contractor shall be made on two booking days per week (Mon-Fri), whereby the Contractor shall not be entitled to early payments.
- (5) Payments shall be made subject to verification of the delivery or service at the place of receipt.
- (6) The Corporation shall only be in default of payment after a reminder has been sent or after the expiry of a payment period determined according to the calendar. If payment by instalments has been agreed, the Contractor shall only be entitled to demand payment of all outstanding instalments, if it has previously threatened to do so within a reasonable period of time and the Contractor is in default with more than 2 instalments.

#### 6. Access to buildings, production facilities and storage areas

- (1) The Contractor must carry out a quality control of the purchased item and provide the Corporation with suitable evidence of this at the latest upon handover. The Corporation shall be entitled to monitor the Contractor's quality control after prior notification. For this purpose, the Contractor shall grant the Corporation access to the production and assembly facilities as well as storage areas during normal business hours.
- (2) If the presence of the contractor or his vicarious agents on the premises or in the premises of the Corporation or the client of the Corporation becomes necessary for the execution of the delivery, the respective house rules for non-occupational employees shall become part of the purchasing conditions

#### 7. Deliveries – Transfer of risk – Contractual penalties

- (1) The place of performance for the delivery shall be the place of receipt specified in the Corporation's order letter.
- (2) Other correspondence relating to the order, such as bills of lading, parcel labels and invoices, shall state at least the order, commission or order number of the Corporation.
- (3) The Contractor shall ensure that, if the object of purchase is subject to special public transport or storage conditions in the country of origin, transit and destination known to him, it is marked and transported in accordance with the regulations and shall make any declarations required for this purpose.
- (4) The agreed quantities shall also be adhered to exactly in the case of partial deliveries, however, in the case of bulk goods an over-delivery of up to 3% of the quantities ordered shall be permissible. In the event of non-compliance, the Contractor shall be obliged to immediately take back the quantity delivered in excess at his own expense and to compensate the Corporation for the damage resulting from the over-delivery.
- (5) Ownership shall pass to the Corporation at the time of transfer to the Corporation or to a third party designated by the Corporation, unless the parties agree on another form of transfer of ownership. Any retention of title by the Contractor - in any form whatsoever - shall be excluded.
- (6) Deliveries shall be made free place of receipt, unloaded. In the case of delivery from the dispatch station, all expenses and freight charges incurred up to the dispatch station shall be borne by the Contractor. The risk of transport, including unloading, to the receiving point or to the dispatch station shall be borne by the Contractor.
- (7) All deliveries require confirmation of delivery at the place of receipt by an employee of the Corporation who is authorized to submit the confirmation. Dispatch notes or delivery notes signed by the Corporation shall only be deemed as confirmation of receipt of the delivery without acknowledgement of its freedom from defects, completeness or fulfilment of the order.
- (8) The agreed delivery date or delivery period is binding. It refers to the receipt of goods at the delivery address specified in the order. Delivery periods shall commence from the date of the order. The Contractor shall not be entitled to make partial deliveries unless otherwise agreed in exceptional cases. If this is the case, partial or residual deliveries shall be marked accordingly. The Corporation shall not be obliged to accept the goods prior to the delivery date. Otherwise, the Corporation shall not be obliged to accept a delivery which is not in conformity with the contract.
- (9) If - for whatever reason - delays in delivery are to be expected, the Contractor must inform the Corporation immediately in writing as soon as this is apparent. The other rights of the Corporation in the event of a delay in delivery shall not be affected thereby.
- (10) In the event of non-compliance with the agreed delivery dates, the Corporation shall be entitled, without prejudice to other claims, to withdraw from the contract after expiry of a reasonable grace period to be set by the Corporation. If the Contractor is in default, the Corporation may claim damages in addition to or instead of the delivery.

(11) If the Contractor is in default with the fulfilment of its obligations, a contractual penalty shall be payable upon expiry of each working day on which the Contractor is in default.

## 8. Packaging/ Dispatch/ Dispatch notifications

- (1) The Contractor shall, at his own expense, adequately package the delivery for transport to the place of destination. Packaging material shall be taken back in accordance with the current packaging regulations. Packaging material shall be collected by the Contractor from construction sites free of charge within a reasonable period of time to be specified by the Corporation. Any empty containers, residues and remaining quantities shall be taken back by the Contractor and disposed of on its own responsibility in accordance with the statutory regulations.
- (2) The dispatch of the delivery shall be notified to the Corporation's place of receipt as soon as possible, at the latest upon dispatch by fax. One dispatch note each shall be sent by separate mail to the place placing the order and to the place of receipt, stating the reference number, number and date of the written order.

## 9. Liability for defects

- (1) The Contractor warrants its deliveries and services in accordance with the statutory provisions, unless the following provisions stipulate something otherwise.
- (2) The Contractor warrants that its delivery complies in all parts with the order, the relevant specifications and the respective state of the art valid at the time of delivery as well as the legal regulations valid at the time of delivery, e.g. the Equipment Safety Act, the Road Traffic Licensing Regulations, the Harmonised VDI Regulations, the provisions of the Association of German Electrical Engineers (VDE), the Act on Protection against Noise in Construction and the Emission and Immission Control Regulations. Properties of a sample or a specimen are deemed to be agreed qualities. If random samples of a delivery show defects, the Corporation shall be entitled to reject the entire delivery.
- (3) In the event that a delivery shows defects, the Contractor shall, at the Corporation's request and without prejudice to its statutory obligations, immediately and free of charge establish the condition in accordance with the contract by assuming all additional costs and in this respect also indemnify the Corporation against claims of third parties. Rectification of defects shall only be considered to the extent that it is reasonable for the Corporation to accept repaired parts. Otherwise, the Contractor shall replace the non-conforming parts with faultless parts, assuming all costs, including incidental costs. In urgent cases, after informing the Contractor, the Corporation shall also be entitled to place the goods in a condition in conformity with the contract, to have them placed by third parties or to make replacement purchases. All resulting costs and ancillary costs shall be borne by the Contractor. Ancillary costs are all costs incurred in connection with the rectification/replacement (e.g. costs for transport, installation and removal, etc.).
- (4) The warranty period shall be two years and one month from delivery, irrespective of the warranty of the upstream supplier. Notwithstanding this, the warranty period for all deliveries intended for use in buildings shall be five years and one month from delivery. The warranty periods stated in the above two sentences shall not apply if a longer warranty period applies due to a separate agreement or - even if not mandatory - statutory provisions. The Contractor shall bear the necessary expenses. Any further claims for damages shall remain unaffected. The return of rejected goods shall be at the expense and risk of the Contractor.
- (5) The contractor assumes a guarantee of quality and durability in accordance with §443 BGB (German Civil Code).

## 10. Notice of defects

- (1) The inspection of the Corporation according to § 377 HGB (German Commercial Code) is limited to obvious defects of the object of purchase. Notification of obvious defects shall be deemed to have been given in good time if it is received by the Contractor within a period of 14 calendar days, calculated from the date of delivery. Notification of defects which are not obvious shall be deemed to have been given in good time if it is received by the Contractor within a period of 14 calendar days, calculated from discovery by the Corporation.
- (2) In the event of weight deviations, the weight determined at the initial inspection shall apply unless the Contractor proves that the weight calculated by him was correctly determined according to a generally accepted method. This shall also apply analogously to deviations in quantity.

## 11. Liability

- (1) The Contractor shall be liable without limitation, in accordance with the statutory provisions, for all damages incurred by the Contractor or its vicarious agents during the provision of the contractual service.
- (2) If a third party suffers damage as a result of a defect or fault in the purchased item, the Contractor shall bear the damage alone, unless the Corporation has caused the damage intentionally or through gross negligence. If the Corporation is held liable by a third party, the Corporation may demand that the Contractor release the Corporation from the obligation towards the third party.
- (3) Furthermore, with the acceptance of the order the Contractor confirms a coverage sum for personal injury, property damage and financial loss with a minimum coverage sum of € 2,500,000.00 per claim and year. The insurance cover must include an extended product liability insurance as well as an environmental liability insurance with the same coverage amounts. A corresponding confirmation from the insurer must also be submitted annually.
- (4) If the Contractor is responsible for the installation or assembly of the delivery item, the Corporation shall assign to the Contractor the duty to ensure road

safety in this respect. Within the scope of the order, the Contractor shall reliably protect all danger points and shall thus also be liable to any third party under tort law. The Corporation shall be responsible for monitoring and controlling compliance with the traffic safety obligations. The Contractor shall indemnify the Corporation against any liability within the scope of its responsibility.

- (5) The Contractor shall be obliged to indemnify the Corporation against any claims by third parties arising from product liability if and to the extent that the Contractor is responsible for the product in accordance with product liability principles. Further legal claims of the Corporation shall remain unaffected.

## 12. Provision – reservation of ownership of the Corporation

- (1) If tools, materials, parts are provided to the Contractor for completion, these shall remain the property of the Corporation and shall be marked as such and kept separately. If the sole ownership of the Corporation in these items is lost due to processing, combining or mixing, the contracting parties agree that the Corporation acquires ownership of the new item in the ratio of the value of the Corporation's item to the other processed items at the time of processing.
- (2) The handover shall be replaced by the fact that the Corporation leaves the new item to the Contractor for safekeeping until delivery.
- (3) Tools, materials, parts which the Corporation leaves to the Contractor for execution - as well as the ordered product itself - may only be used for production on the basis of the order.

## 13. Third party rights

The Contractor shall be liable for ensuring that its contractual performance does not infringe any patents or other industrial property rights of third parties. If a third party asserts claims due to an infringement of its rights, the Contractor shall be obliged to indemnify the Corporation, its affiliated companies and their customers against such claims. The obligation to indemnify refers to all expenses necessarily incurred by the Corporation, the affiliated companies or their customers in connection with the claim by a third party.

## 14. Intellectual property, secrecy and data protection

- (1) The Corporation reserves the property rights and copyrights to all drawings, models, samples and other documents which the Corporation makes available to the Contractor.
- (2) The aforementioned documents shall be used exclusively for production based on the Corporation's order. Insofar as a redrawing or other modification of drawings or documents becomes necessary, the Contractor shall affix a copyright notice in favour of the Corporation. After termination of the contract, all documents shall be returned to the Corporation without being requested to do so. The Contractor shall be obliged to keep its documents received in connection with the execution of the contract for at least 10 years from delivery to the Corporation.
- (3) The Contractor shall be obliged to keep the contents of this agreement as well as all information of a technical and non-technical nature received from the Corporation, in particular drawings, models, samples and other documents, strictly confidential and not to make them accessible to third parties as well as to observe the applicable regulations on data protection; third parties shall also be companies affiliated with the Contractor. In addition, technical information of any kind may not be transferred abroad. This obligation to maintain secrecy shall also apply after completion of the contract. It shall not apply to generally known knowledge, the knowledge of which is not based on a breach of contract by the Contractor.
- (4) Information provided to the Corporation by the Contractor shall not be deemed confidential unless the Contractor has separately agreed this with the Corporation in writing prior to acceptance of the order.

## 15. Compensation claims of Corporation

- (1) Claims for damages by the Contractor, irrespective of the legal basis, are excluded for slight negligence. This exclusion of liability shall not apply in the case of injury to life, limb or health and in the case of slightly negligent breach of essential contractual obligations.
- (2) In cases of slightly negligent breach of essential contractual obligations, liability shall be limited to compensation for the typical damage foreseeable at the time the contract was concluded. The same applies to grossly negligent actions of simple vicarious agents.
- (3) Insofar as the Corporation's liability is excluded or limited, this shall also apply to the personal liability of the employees, other employees, representatives and vicarious agents of the Corporation.

## 16. Force Majeure

- (1) If the Corporation is prevented by force majeure from fulfilling its contractual obligations, in particular from accepting the goods, the Corporation shall be released from its obligation to perform for the duration of the hindrance plus a reasonable start-up period. Unforeseeable circumstances for which the Corporation is not responsible, which make acceptance unreasonably difficult or temporarily impossible, in particular industrial disputes, official measures, energy shortages and major operational disruptions, shall be deemed equivalent to force majeure. If these obstacles persist for more than three months, each party shall be entitled to withdraw from the contract.
- (2) The Corporation's right of withdrawal in cases of force majeure at the Contractor's premises, which make performance impossible for the Contractor not only for a short period of time, shall remain unaffected.

## **17. Assignment - Set-off - Right of retention**

- (1) The assignment of the Contractor's claims against the Corporation is only permissible with the prior written consent of the Corporation.
- (2) The Contractor shall only be entitled to offset and assert rights of retention if its counterclaims are undisputed or have been established as final and absolute. In addition, the Contractor shall only be entitled to assert a right of retention if it is derived from the same contractual relationship.
- (3) The Corporation shall be entitled to assert claims of affiliated companies in accordance with §§ 15 ff. of the German Civil Code (BGB). AktG against the Contractor's claims to which the Contractor is entitled from or in connection with the present transaction. The aforementioned group companies may also set off their own claims against claims of the Contractor arising from or in connection with the present transaction. Upon written request by the Contractor, the Corporation shall provide information about the group companies which are entitled to set-off.

## **18. Miscellaneous - partial invalidity**

- (1) Insofar as these Terms and Conditions of Purchase are invalid in whole or in part, the contract shall remain effective, in particular the Terms and Conditions of Purchase.
- (2) The invalid provision shall be replaced by a provision which comes closest to the economic intention in a legally permissible manner.

## **19. Place of performance - Place of jurisdiction - Applicable law**

- (1) The place of performance for payments by the Corporation is the domicile of the payment initiating office of the Corporation.
- (2) If the supplier is a merchant, the place of jurisdiction shall be the Corporation's place of business. However, the Corporation shall also be entitled to sue the Contractor at his place of residence or place of business.
- (3) German law shall apply exclusively. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

## **20. Code of Conduct for Subcontractors and Suppliers**

The Contractor is obliged to comply with the following code of conduct for subcontractors and suppliers.