

## **General Terms and Conditions of Purchase**

of the Principal described on the reserve

### **1. Orders and other declarations**

- 1.1. The following General Terms and Conditions of Purchase apply to all contracts concluded by the Principal and the Contractor and to all other agreements concluded as part of the business association.
- 1.2. Contracts (orders and acceptance) and delivery schedule allocations (release orders) as well as amending and supplementing these are subject to the written form. Verbal agreements are subject to written confirmation.
- 1.3. If the Contractor does not accept the order within three weeks from receipt, the Principal will be entitled to cancel. Delivery schedule allocations (release orders) will acquire binding force at the latest if the Contractor does not object within three workdays from receipt.
- 1.4. The General Terms and Conditions of Purchase will be deemed acknowledged by the Contractor upon acceptance of the order or delivery and / or the rendering of service.
- 1.5. If the Contractor confirms the order by way of conditions to the contrary, the contract will only be deemed concluded if an unconditional confirmation by the Principal or another joint agreement is presented regarding all variations.

### **2. Prices**

- 2.1. The prices stated in the order are fixed prices and include the remuneration for all deliveries and / or services assigned to the Contractor by way of this order, and apply inclusive of packaging.
- 2.2. The agreed prices apply to deliveries free receiving plant, while for general cargo it is free receiving station, for wagon loads free connection railway, for services for the completed work.
- 2.3. Cost estimates are a binding basis for resulting orders for the period in which they are valid. They are not to be remunerated unless provisions to the contrary were expressly agreed upon.

### **3. Delivery and / or service scope**

- 3.1. The order is authoritative for the content, type and scope of the delivery and / or service.
- 3.2. The Contractor will only be entitled to make variations from the proposed delivery and / or service scope, make additional requests and / or schedule changes if these circumstances were agreed in writing.
- 3.3. The Contractor is to ensure, in particular, that its delivery and / or service are in good working order and are suitable for the proposed use. In the case of building and / or assembly orders, the Contractor undertakes to obtain information at its own responsibility about the authoritative circumstances, in particular existing preconditions or special features regarding the building and / or assembly site.

### **4. Delivery periods, delivery dates**

- 4.1. The delivery and / or service dates stated in the delivery schedule allocation have binding force.
- 4.2. The day on which the ordered delivery item, the shipping documents and requested certificates are received at the receiving station specified by the Principal and / or the service has been rendered in full is to be deemed the day of delivery.
- 4.3. If it becomes clear that the delivery and / or performance date will be overrun, the Contractor is to inform the Principal in writing without delay of the reason and the likely duration. Irrespective of this, overrunning the delivery time will trigger the statutory penalty for default unless the overrun is proven to be based on force majeure affecting the Contractor or industrial disputes that are not the Contractor's responsibility.
- 4.4. In the case of overrunning the delivery date as a result of force majeure or industrial disputes for which none of the parties is responsible, the Principal may either request the execution of the order at a later date, without the Contractor being able to assert claims as a result, or wholly or partially withdraw from the contract following expiry in vain of a period of reasonable length that is set.
- 4.5. The work must be continued without interruption and the agreed dates must be adhered to including in the event of differences of opinion and resulting court disputes between the Contractor and the Principal.
- 4.6. If the Contractor exceeds the agreed dates, the Principal will be entitled, following expiry of a reasonable period that it has set, at its discretion to request subsequent delivery and compensatory damages regarding late delivery or compensatory damages regarding non-performance by way of rejecting a delayed delivery, including the loss of expected profit. In the place of the above-mentioned rights, the Principal may withdraw from the contract; payments already made in relation to the contract

are to be reversed. The Principal's compensatory damages refer expressly to direct and consequential damage.

- 4.7. The Principal is entitled to refuse acceptance of goods delivered prior to the date stated in the order or return goods delivered early at the Contractor's cost and risk or store these with third parties.
- 4.8. If the Contractor fails to adhere to the dates and periods in the case of delivery schedule allocations (release orders), the Contractor will be in default if it has not objected to the delivery schedule allocations (release orders) within three workdays. The Principal is not required to issue a warning in the case of delivery schedule allocations (release orders).

## **5. Force majeure and equivalent circumstances**

- 5.1. Force majeure, industrial disputes, unrest, administrative measures and other unforeseeable, unavoidable and serious events release the contracting parties for the duration of the disruption and in the extent of its effect from the delivery and / or service obligations. This also applies if these events occur at a time at which the affected contracting party is in default. The contracting parties undertake, as part of acceptable action, to furnish the necessary information without delay and adjust their obligations in good faith in line with the changed circumstances.
- 5.2. The Contractor may cite its right to postponement at most for eight weeks. Following expiry of this period, the Principal may withdraw from the contract. The Contractor's postponement right does not apply in the case of ultimate delivery and / or service obstacles or fixed business transactions.

## **6. Packaging, shipping, acceptance**

- 6.1. In the absence of agreements to the contrary, goods to be delivered are to be packed as is customary in the trade, appropriately and in an environmentally-compatible way.
- 6.2. The place of performance is the receiving station stated by the Principal. In the absence of provisions to the contrary in the order, as a general rule this is the Principal's plant.
- 6.3. Deliveries are to be made free to the respective specified receiving station including packaging insofar as nothing to the contrary is agreed in writing. Deliveries for which the Principal is to assume all or part of the freight costs are to be conducted by way of the most cost-effective mode of transport for the Principal provided the Principal has not specified any specific mode of transport. In the absence of provisions to the contrary in the order, the Principal states that it is a waiver customer regarding an SpV insurance. The Principal does not assume cartage or other expenses at the place of dispatch.

- 6.4. A delivery note with details of the order and item number, material number and a note whether the consignment is a supply or partial delivery is to be included with all consignments. The delivery note must also contain details of the gross and net weight.
- 6.5. Insofar as nothing to the contrary was agreed, the Contractor carries the transport risk. The goods will be transported at the Contractor's cost and risk of the Contractor has assumed the transport obligation incumbent upon the Principal by way of a separate agreement.
- 6.6. In the case of quantity or weight differences, the quantities or weights that have been determined at the receipt of goods at the receiving station will be deemed authoritative.
- 6.7. The Principal may further refuse to accept the delivery item if an event of force majeure or other circumstances beyond its sphere of influence, including industrial disputes, render acceptance impossible or unacceptable for the Principal. In such a case the Contractor is to store the delivery item at its own cost and risk.

## **7. Means of production and provision of materials**

- 7.1. Models, drawings, samples, dies, tools, guides and / or other technical aids and documents that are made available to the Contractor or are created by the Contractor according to the Principal's details remain the Principal's property, and may neither be sold, pledged or otherwise forwarded to third parties nor used in any way for third parties without written approval by the Principal. The same applies to the items produced by way of using such means of production. They may only be supplied to the Principal insofar as the Principal has not issued a written statement consenting to other use. Drawings and models remain the Principal's material and intellectual property that is not for sale, and are to be returned without request after use. The Contractor will be liable for any violation.
- 7.2. The Contractor is liable to the Principal for the loss of or damage to provided items. The Principal is to be informed without delay prior to legal or actual impairment to such items.
- 7.3. The materials provided by the Principal are finished and processed by order of the Principal, and remain the Principal's property at the finishing and / or processing level. In the case of processing with other items that are not the Principal's property, the Principal will be entitled to co-ownership of the newly created item in the proportion of the value of the provided item to the value of all items used in the production and the expenses incurred by the Contractor for the processing. Insofar the Contractor is also to store the items gratuitously on behalf of the Principal. The same applies if the Principal's ownership is lost as a result of mixing or blending.

## **8. Production tests / final controls**

- 8.1. The Principal reserves the right to check the quality of the used material, measurement and quantity precision and other quality of the produced parts, and adherence to the other requirements set out in the order, at the Contractor's plant and those of its subcontractors before, during production and prior to delivery.
- 8.2. If the Principal has reserved the right to conduct its own final control of the finished delivery item at the Contractor's plant and / or by a third party commissioned by the Principal, the Principal and the commissioned third party are to provide prior notification of the willingness to conduct a final control in writing 14 days in advance unless another regulation is agreed. The material cost of production tests and final controls are to be borne by the Contractor.
- 8.3. If the Principal has specified the final control of the finished delivery item by a third party, the Contractor is to make arrangements free of charge for the final control to be conducted by a third party on behalf of the Principal, and forward the control result to the Principal without delay, at the latest with the shipping documents.

## **9. Invoice and payment**

- 9.1. Invoices are not to be enclosed with the consignment, but rather submitted separately in duplicate with details of the order, item and material number. Payment agreements are to be stated in full in the invoice, otherwise the Principal will be entitled to deduct trade discount following expiry of the period specified in that respect. Invoices that are not available by the 4th day of the month following the delivery may only be settled at the end of the month following receipt of invoice without allowance for interest. The respective, valid statutory VAT is to be stated separately pursuant to the statutory requirements.
- 9.2. Payments are made on condition of the accuracy of invoices and compliance with the contractual provisions of the paid deliveries and / or services. In the absence of agreements concluded to the contrary, payments will be made within 60 days after the month following receipt of the delivery item and / or the rendering of service less a 2 % trade discount or, at the Principal's discretion, within 90 days following receipt of the delivery item and / or the rendering of service without deduction of a trade discount by way of a bank transfer or check. A delivery and / or service performed before the date does not affect the payment period bound by that date.
- 9.3. Only the measurements, weights and number of items determined by the Principal are authoritative for the calculation.
- 9.4. In the case of agreed partial deliveries, the agreed payment period for the entire delivery is determined according to the date of the last partial delivery.
- 9.5. Payment regulations by way of cash on delivery do not apply as a general rule.
- 9.6. An invoice pursuant to Section 14 UstG [German Income Tax Act] is the required precondition for payment.

9.7. In the event of a faulty delivery and / or faulty service, the Principal will be entitled to hold back payment proportionate to the value up until the delivery and / or service is properly honored.

9.8. The Principal is entitled to use due or deferred receivables for setting off.

## **10. Assignment and setting off**

10.1. Without written approval by the Principal, the Contractor may neither assign its contractual claims in full nor in part to third parties provided the claims in question are not undisputed or are not res judicata claims. With regard to advance assignment as part of a reservation of title on the part of the Contractor's subcontractors, approval is hereby granted on condition that setting off is also permitted by way of counter-claims acquired after notification of the assignment.

10.2. The Principal is entitled to set off all its claims against the Contractor, provided these have fallen due and are not disputed, with all claims to which the Contractor is entitled resulting from deliveries or for other legal reasons against the Principal's company.

## **11. Proprietary rights**

11.1 The Contractor is also to ensure that the third party rights are not infringed as a result of the delivery or use of the delivered item and /or the rendered service, in particular industrial proprietary rights. The Contractor shall be liable if such rights are infringed.

11.2 If an action is brought against the Principal by third parties regarding such an industrial proprietary right infringement, the Contractor is to render the Principal exempt from such claims and reimburse the Principal for all necessary expenses incurred by the Principal. Furthermore, the Contractor is to provide all the technical support that the Principal requires to ward off claims asserted for industrial proprietary right infringements.

## **12. Guarantee**

12.1. The Contractor guarantees that the delivery item and / or the service is free of material defects in a legal sense and that the item and / or the service corresponds with the latest technological developments and is free of faults that render useless or minimize the value or the suitability for customary use or use proposed pursuant to the contract.

12.2. The Contractor furthermore also provides both an express quality and durability guarantee for the delivery item and / or the rendering of services.

- 12.3. Materials that are subject to processing by the Principal are only deemed accepted as per agreement if they prove to be in line with the conditions after processing. This does not affect the guarantee period.
- 12.4. The Contractor is to rectify defects in the above sense without delay at its own cost. If the rectification of defects is not possible, not customary or unacceptable, the Principal may instead request the delivery without delay, without costs incurred by the Principal, of a fault-free delivery item.
- 12.5. If the Contractor fails to honor its obligation to rectify defects or provide a replacement delivery without delay following a request to do so, if the Contractor refused to honor these obligations or if the Contractor is unable to provide a replacement delivery, the Principal may assert the other statutory guarantee rights without setting an additional period. In urgent cases, the Principal is entitled to subsequently improve a faulty delivery item at the Contractor's cost or procure a replacement from a third party.
- 12.6. In the absence of agreements to contrary, the guarantee period is 2 years. With regard to services purchased by the Contractor, and third party parts, to honor the contract, the guarantee period is 48 months. The Contractor waives objecting to delayed notification of a defect (Sections 377, 378, 381(2) HGB [German Commercial Code]), however the Principal must be have provided with notification of defects in the above sense up until expiry of the guarantee period.
- 12.7. The guarantee period commences upon the hand-over of the delivery items and / or the acceptance of the rendered service by the Principal or the third party stated by the Principal at the receiving station specified by the Principal. With regard to subsequently improved or replaced delivery items and / or services, the guarantee will start afresh if the subsequent improvement was considerable in terms of type, cost and scope, and the Contractor had acknowledged the obligation to provide subsequent improvement. With regard to properly stored reserve parts (e.g. tools and spare parts), the guarantee period only commences upon the commissioning, but ends however at the latest 3 years following receipt of the party by the Principal.

### **13. Product liability**

- 13.1. The Contractor is to render the Principal exempt, at the first request, from third party claims for damages regarding product damage, in particular within the meaning of the Product Liability Act and the Product Safety Act, insofar as the cause is within its area of influence and organization and the Contractor is itself liable in external dealings.
- 13.2. The Contractor is to reimburse the Principal for expenses for measures that appear necessary to ward off subsequent liability due to such product damage, in particular re-call campaigns.
- 13.3. The Contractor undertakes to maintain a product liability insurance with an amount insured commensurate to the scale of the order.

#### **14. Performing work**

Persons who perform work on the Principal's plant grounds by way of executing the contract are to comply with the provisions of the Principal's building and assembly site rules. Liability for accidents suffered by these persons on the plant grounds is excluded provided proof is not furnished of intent or gross negligence.

#### **15. Data protection**

The Principal points out that pursuant to Section 33 BDSG [German Data Protection Act] the Principal will store the Contractor's data as part of the German Data Protection Act.

#### **16. Advertising ban**

Use of the Principal's inquiries and orders and the appertaining written correspondence for advertising purposes is not permitted.

#### **17. General provisions**

- 17.1. In the event that a provision of these conditions and the additional agreements that are concluded is or becomes invalid, this shall not affect the validity of the contract in other respects. The contracting parties undertake to replace the invalid provision with a regulation that comes closest to its economic success.
- 17.2. Solely the law of the Federal Republic of Germany applies provided nothing to the contrary is agreed.
- 17.3. Application of the uniform sales laws in the Hague Sales Law Convention is excluded.
- 17.4. The regulations of the UN Sales Law [United Nations Convention dated 11.04.1980 on Contracts for the International Sale of Goods] on rescinding contracts (Article 49) are similarly excluded.
- 17.5. The Principal's principal place of business is deemed the place of performance.
- 17.6. The court with jurisdiction for the Principal's principal place of business is deemed the place of jurisdiction.



17.7. These General Terms and Conditions of Purchase also apply by way of analogy to other kinds of contracts, in particular contracts for work and services and delivery contracts.