

Purchasing Terms and Conditions

1. General conditions

The terms and conditions below apply exclusively for our orders. Any deviating terms and conditions in the quotation or order confirmation of the supplier only apply if they are expressly accepted by us in writing. Our general business terms and conditions apply even if we accept performance without reservation and with knowledge of conflicting general business terms and conditions or other contract terms and conditions of the supplier.

2. Order

Only orders issued in writing are binding. Agreements concluded by e-mail or verbally require our written confirmation. The seller is bound by its quotation for a period of 4 weeks.

Costings, drawings, plans and other documents made available to the seller remain our property.

3. Correspondence

A reference to our enquiry/order data must be included on all correspondence.

4. Prices

Prices in the order are binding.

The prices cover all performance of the supplier to meet its delivery obligation, in particular all levies, duties, delivery costs and packaging, but are quoted net of VAT.

If prices are not agreed in advance in exceptional cases, the contract is only concluded when a binding price quotation is confirmed by us in writing.

5. Packaging

Packaging must be taken back being returned by the recipient carriage prepaid. Incurred packaging costs have to be reimbursed in full. This applies even when packaging is damaged in the course of transportation or during removal of the goods. The supplier guarantees that both the transport packaging and the outer packaging are made of recyclable materials according to the Packaging Directive.

6. Force majeure

All incidents due to force majeure and resulting disruptions of any kind that restrict or shut down our operations or the operations of our customer entitle us to postpone the performance of our acceptance obligations, or to withdraw from the contract in whole or in part. No claims for damages can be derived from this.

7. Delivery dates

The agreed delivery dates are binding. The supplier is obligated to notify us promptly in writing if circumstances occur or become discernible indicating that the delivery may be delayed.

In case of late delivery, we are entitled – after an adequate grace period has passed with no results – to withdraw from the contract and demand lump-sum compensation in the amount of 10% of the value of the late delivery, unless we incurred higher damages caused by delay or the supplier proves that the damage is lower on a case-by-case basis.

We expressly point out that the components are needed and used for large industrial facilities. Delaying the construction and commissioning of such industrial facilities can lead to significant claims against us for delays and compensation, which usually exceed the 10% flat rate by far. We reserve the right to assert claims for such additional damages, with supporting documents.

Claims against the seller cannot be asserted if exceeding the agreed delivery date is beyond the seller's control. In this case the seller is entitled to a deadline extension. This does not apply to weather conditions or delivery delays by the seller's suppliers. No deadline extension is granted in these cases.

8. Liability/insurance

a) In case of third-party claims for damages against us due to a product defect that is the responsibility of the seller, the seller is obligated to indemnify the buyer from all third-party claims by first request, including coverage of the costs required to defend against said claims. The seller is free to provide proof that is not responsible for product damage.

b) If the seller must make improvements or changes to the product or carry out a recall because of a defect, the seller is obligated to reimburse all costs incurred by us and by customers/builders as a result.

c) The seller is obligated to obtain and maintain product liability insurance for the object of the contract with adequate coverage of at least EUR 1 million per case of loss for personal injury/damage to property. Further claims by us remain unaffected.

d) If claims are asserted against us by third parties because the sales object is defective or violates proprietary rights, the seller obligates itself to indemnify the buyer from said claims on first request, including the expenditures required for damage prevention.

9. Maintenance

For the delivery of machines and equipment, the supplier is obligated to submit an offer for maintenance in addition to the quotation for production and delivery. The supplier is bound by this maintenance offer for at least 6 months after the overall system is put into operation.

In addition, the seller is obligated to provide operating manuals and maintenance instructions in paper and digital form without separate compensation.

10. Delivery notices

Before or at the latest on the date of dispatch, a shipping notice must be submitted to our purchasing department with precise information regarding the content, quantity, dimensions, weights etc. and the order number. This has to reach us before the shipment is received.

Shipments are not processed before the delivery documents arrive. The incurred costs are borne by the supplier.

Insofar as deliveries are intended for export, pro forma commercial invoices, certificates of origin and other export documents required according to the import regulations of the destination country must be submitted prior to shipment.

11. Export authorisation

Compliance with the applicable export regulations in the respective current version is mandatory.

12. Shipment, passing of risk

- a) Departments, the order number, subject matter or reference must be included on all shipping documents. Costs incurred due to failure to comply with our shipping regulations shall be borne by the seller.
- b) Delivery notes are required for all deliveries and must be submitted in a timely manner in writing.
- c) The supplier bears all risks until acceptance/receipt of the delivery.
- d) Insofar as freight at our expense was agreed, the supplier is responsible for complete and correct content and information in the bills of lading.

13. Payment terms

Invoices have to include our order references (order and job numbers).

Unless anything to the contrary is agreed, we pay after receipt of the invoice and goods within 30 days with the deduction of a 3% discount or after 60 days net. Payment is deemed to be on time if we can provide proof that we issued the payment order by the cut-off date.

If invoices fail to contain all required information, the payment term and especially the 30-day term for the deduction of the discount are calculated starting on the day all required information is available to us.

We do not accept COD shipments; incurred costs shall be borne by the supplier.

In conjunction with the other companies in our group, we are authorised to offset all claims of the supplier with all claims of us or our company group against the supplier.

The list of the companies mentioned above shall be provided on request.

As coverage for warranty risks, the buyer is entitled to retain 5% of the invoice amount as a warranty holdback until the warranty expires. The buyer has the right to replace this holdback with a performance bond. The bond needs to be issued with a waiver of the defences of voidability, set-off and unexhausted remedies, and the right to deposit. Waiving the right to set-off does not apply in case the counter-claim is undisputed or legally established. The claim against the guarantor does not expire before the expiration of the warranty rights, but no later than 10 years after the bond is issued. The bond must be returned at the end of the warranty period.

The supplier is not entitled to set-off or to assert a right of retention against us, unless the claims of the supplier are legally established.

If we make prepayments on our orders, we are entitled at any time to demand suitable collateral or the transfer by way of security of corresponding materials, in particular the items ordered and being processed.

14. Assignment

Without our prior written consent, the supplier may not transfer its contractual claims to third parties in whole or in part.

15. Warranty

Unless anything to the contrary is agreed, the supplier warrants its deliveries – including conformity with the specification of services – for 36 months from the date the goods are accepted in case of deliveries and for 5 years in case of buildings. We are obligated to inspect the goods for possible quality and quantity deviations within an adequate term. Complaints are deemed to be timely if they are received within 10 working days from the date all goods are received.

If a concealed defect is only found after acceptance, the period of limitation begins only with the detection of the defect. The objection of late inspection and notification of defects (Section 377 of the German Commercial Code (HGB)) is excluded. In case of defective delivery, we have the right to demand the correction of defects or replacement delivery at our discretion. The right to compensation, especially compensation in lieu of performance, is expressly reserved.

In urgent cases or supplier delays, we have the right to immediately obtain a replacement or make a covering purchase at the supplier's expense. Payment by us does not constitute confirmation of freedom from defects. The supplier is liable for any violations of patent rights and other third-party proprietary rights caused by the delivery. The supplier is obligated to indemnify us from any third-party claims.

16. General regulations

Compliance with all applicable laws and other provisions or bodies of rules and regulations, such as the accident prevention regulations of the national Employer's Liability Insurance Association, is required for all deliveries and performance.

All machines, components, replacement parts and machine modules to be delivered must include a declaration of conformity according to Directive 89/392/EEC, and have to bear the CE marking.

We reserve the right to return machines that do not meet these requirements at the shipper's expense.

17. Orders

We retain ownership to parts or materials we provide to the supplier. They must be identified promptly following the goods receiving inspection and stored separately until they are used in accordance with the contract. Processing or alteration by the supplier is performed on our behalf. If our goods subject to retention of title are processed with other goods not belonging to us, we acquire joint ownership of the new goods in proportion to the value of our goods relative to the other processed goods at the time of processing.

This applies accordingly if our goods are inseparably mixed with other goods.

18. Drawings, models

Information provided to the supplier as well as models, drawings, designs and other samples, no matter whether they are originals or copies, remain our property, are protected by our copyright and may not be used for other purposes, duplicated or made available to third parties.

Our approval or release issued for drawings, plans, designs or other samples does not relieve the supplier of its liability for the accuracy and integrity of the documents provided by the supplier and the proper completion of the work.

Spare parts, operating manuals, documentation, certificates etc. must be provided to us unasked and free of charge not later than at the time of delivery. Delivery also includes instructing the customer's and our employees, in particular regarding the installation and use of the system.

19. Prohibition of Restrictions of Competition/Corruption

- (1) The Supplier undertakes to ensure that neither the Supplier, its employees nor its subcontractors or their employees:
 - promise or grant advantages to persons close to the persons and companies who are involved in the preparation, negotiation or implementation of the contract on the part of the Buyer. It is irrelevant whether the benefits are offered, promised or granted to the aforementioned persons or to a third party in their interest.
 - Participate in inadmissible Restraints on Competition within the meaning of the GWB (German Act against Restraints of Competition), in particular an agreement with third parties on the submission or non-submission of offers, on prices to be charged, on the payment of compensation for loss (profit sharing or other costs) and on the determination of recommended prices.
- (2) If there is a violation of one of the obligations according to paragraph (19.1), we are entitled to terminate the contract for good cause or to withdraw from it.
- (3) We can limit the termination according to paragraph (19.2) to a separately billable part of the contractual service. It is not necessary for the separately billable part of the contractual service to be an independent functional service component.
- (4) In the event of a withdrawal from the contract according to paragraph (19.2), we are entitled, instead of returning the received services according to § 346 BGB, to keep them and to pay the Supplier the contractually stipulated part of the remuneration or, in the case of payments already made, keep them in place.

The Supplier must compensate the Buyer for all damage that arises directly or indirectly as a result of the notice of termination given in accordance with paragraph (19.2) or the withdrawal from the contract that took place in accordance with paragraph (19.2). Further rights of the Buyer remain unaffected.

In addition, we reserve the right to exclude the supplier from future awards for a reasonable period of time in the event of violations of the obligations under paragraph (19.1). When measuring the period for the exclusion of procurement procedures, we apply the updated specifications of the State of Hessen. These currently result from the "Joint circular in the announcement of November 23, 2020 (StAnz. 48/2020 p. 1216) regarding the exclusion of applicants and bidders due to serious misconduct that question their reliability".

20. Law, jurisdiction

German law applies for all legal relationships between the orderer and supplier. The provisions of the United Nations Convention on the International Sale of Goods do not apply.

The place of fulfilment for all deliveries is the respective delivery address according to the order.

The jurisdiction for both parties is Darmstadt / Germany.

Should a provision of these general business terms and conditions prove ineffective or infeasible, the effectiveness of the remaining general business terms and conditions and the contract as such shall remain unaffected. The parties obligate themselves now and in advance to replace the ineffective clause with a legally effective provision that comes as close as possible to the original intent.

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