

ETU Rohr GmbH – General Terms and Conditions of Purchase

1. General information, Scope of validity

- 1.1 These General Terms and Conditions of Purchase shall apply towards companies, corporate bodies under public law and special funds under public law. By accepting these General Terms and Conditions of Purchase without any objection or by fulfilling the contractual conditions, the contractor agrees to these conditions being exclusively valid for all deliveries and performances. Any adverse or deviating conditions provided by the contractor are not accepted by us unless we have given our express written approval for their validity. Our General Terms and Conditions of Purchase are even valid if we accept the delivery without any reservation, being aware of the contractor's adverse or deviating conditions.
- 1.2 Any agreements concluded between us and the contractor for the purpose of performing this contract have to be set out in writing. Any oral additional agreements shall only be valid after explicit written confirmation by us. The only decisive condition is the confirmation by our purchase department or our Management.
- 1.3 Our General Terms and Conditions of Purchase continue to be effective for any future business transactions with the contractor.

2. Offer, offer documents, responsibility

- 2.1 The contractor has to confirm our order within a period of 10 days. The contractor is not authorized to transfer the execution of the order to any third party. Any additions, restrictions or other deviations relating to the order and/or the associated documents require the written confirmation by our purchasing department or the Management.
- 2.2 The contractor has to treat the order, the conclusion of the contract as well as the terms of the contract as confidential. Only after having received our written approval may he mention our order for the purpose of a reference or for advertising purposes.
- 2.3 We reserve the right of property as well as the copyright for all drawings, calculations, tools and other documents; they may not be disclosed to any third party without our explicit written consent. They may only be disclosed to those employees of the contractor who need this information for the purpose of executing this order. They may only be used for the purpose of producing the products under our order; after its completion they have to be returned to us without any request being made. Even after the completion of the order this information shall be kept secret in relation to third parties. The contractor is liable for any damages, which may occur caused by culpable non-compliance.
- 2.4 Our consent given regarding drawings, calculations and other documents does not affect the contractor's sole responsibility regarding the article of sale. This also applies to proposals, recommendations and other involvements contributed by us.

3. Prices, payment conditions, set-offs, assignment

- 3.1 The price mentioned in the order is a binding price. It is to be understood plus the Value Added Tax valid in each case. In default of any deviating written agreements the price for delivery „free domicile“ includes freight charges and packing customary in trade. We reserve the right to choose the carrier. If a price „ex works“ or „ex stock“ is agreed, we only assume the lowest freight charges. All the costs occurring up to delivery to the carrier including loading and freight charges shall be borne by the contractor.
- 3.2 Invoices can only be processed by us if they contain – corresponding to the indications given in our order – the order and job number given there - if these indications are not stated, the invoice is deemed to have not been received.

The contractor is liable for any consequences caused by the non-compliance of these obligations, unless he is not responsible for this non-compliance.

- 3.3 Unless otherwise agreed in writing we shall pay invoices within a 14-days' period after delivery in due form and after receipt of invoice with 3 % discount or within 60 days without any deduction.
- 3.4 Any payments are effected under reserve of invoice verification and under reserve of our rights resulting from the delivery of defective goods or performances. As far as any notice of defects is known at maturity, we have the right to withhold payments of a reasonable amount.
- 3.5 We have the right of setoff and retention according to legal regulations.
- 3.6 Any of our receivables may not be assigned without our prior written consent, which shall not be withheld without reasonable cause. This does not apply for any assignments under a prolonged title of retention. § 354 a HGB (code of commercial law) remains unaffected.
- 3.7 Any disputes regarding the compensation amount do not authorize the contractor to cease the performance of his service in parts or as a whole even on a temporary basis.

4. Delivery periods, delayed deliveries, Force majeure

- 4.1 The delivery period mentioned in the order is binding. Early deliveries as well as excess deliveries, short deliveries and part deliveries are only permitted after and to the extent of our explicit written approval.
- 4.2 The contractor is obliged to inform us without delay if any circumstances occur or are foreseeable which indicate that it will become impossible to keep the stipulated delivery period or the agreed specifications. If he fails to give such a notice within 5 days at the latest, no delay of delivery will be accepted.
- 4.3 In case of any delayed delivery we are authorized to claim damages as a lump-sum for a delayed provision of performances of 0.5 % of the order amount per beginning week of delay, however not more than 5.0% in total, or to let the performance, which the contractor failed to fulfil, carry out by a third party at the expense of the contractor. We reserve the right to enforce further legal claims. After expiration of a reasonable extension of the deadline set by us, we are authorized to claim damages in place of the performance of services and/or to withdraw from the contract.
- 4.4 The unconditional acceptance of a delayed delivery or performance does not imply a waiver of claims for compensation to which we are entitled.
- 4.5 Regarding quantities, weights and measurements the values which we determine during incoming goods control are prevailing under reserve of any evidence otherwise provided.
- 4.6 If any labour disputes, breakdowns which are not caused by the party's fault, riots, official measures or other inevitable and unforeseeable events (cases of Force majeure) last for a considerable period and cause a substantial diminution of our demand, we shall have the right – without prejudice to our other rights – to withdraw insofar from the contract in parts or as a whole.

5. Transfer of risks, delivery notes and shipping documents

- 5.1 The contractor shall bear the risk (transfer of risk) up to the arrival of the consignment at our premises or at the premises of the recipient specified by us.
- 5.2 The contractor is obliged to indicate our order and job number on all the shipping documents and delivery notes. If he fails to do so, we shall not be responsible for the delays and/or losses caused by this failure. The contractor is obliged to indemnify us in this respect.

6. Guarantee, regress

- 6.1 The contractor guarantees that his performances correspond to the generally accepted rules of technology, to all relevant standards, to the properties and conditions agreed under the contract as well as to the relevant safety instructions, that they have the guaranteed properties and that they are apart from that free from any defects of quality or legal defects.
- 6.2 The contractor shall waive the right to plead for delayed notice of defects.
- 6.3 Acceptance and approval are always effected under reserve of all rights, especially the rights resulting from defective or delayed delivery. If the acceptance and/or approval will be prevented or substantially aggravated by any conditions beyond our control we shall be authorized to defer the acceptance and/or approval for the period during which these conditions exist. If this situation lasts for a period of more than six months, the approval will be granted to the contractor.
- 6.4 We are entitled to enforce the full range of legal claims concerning defects of quality or legal defects. Apart from this we are entitled to claim from the contractor at our option remedy of defects or replacement, as far as the contractor is not allowed to refuse the method of rectification chosen by us according to § 439 Sect. 2 BGB (German Civil Code).
- 6.5 If the contractor does not immediately start to remedy the defects after being requested to do so, we shall be authorized in urgent cases - after having consulted the contractor - to carry out the requested measures ourselves at his costs or to let them carry out by a third party.
- 6.6 The statutory limitation period for claims resulting from defects of quality is 36 months, beginning at the time of passing of risk. We are entitled in full to any legal statutory limitation periods which are longer according to §§ 438, 479 and 634 a BGB (German Civil Code).
- 6.7 Furthermore, in case of any legal defects, the contractor holds us harmless from any third party claims. Claims resulting from legal defects are subject to a period of limitation of 10 years.
- 6.8 For any goods which are repaired or replaced within the statutory limitation period, the statutory limitation period agreed under these contract restarts.
- 6.9 If we incur - as a result of the contractor's defective performance or delivery - any transport costs, tolls, costs for labour, materials or receiving inspection beyond the normal extent, these costs have to be reimbursed by the contractor. This also applies to any expenses we have to bear in relation to our customers because of their rectification claims.
- 6.10 If any goods produced and/or sold by us are returned as a consequence of their defectiveness in the contractor's performance or delivery, or if this results to a reduction of the set purchase price and/or if we face any claims for defects for this reason, we will be authorized to regress to the contractor without the necessity of setting a deadline as usual.
- 6.11 Irrespective of the stipulation according to item 6.6, our claims under 6.9 and 6.10 will become barred by the statute of limitation at the earliest 2 months after the date of meeting our customer's claims, or at the latest 5 years after the contractor's delivery of the goods.
- 6.12 If any defect of quality appears within a period of 6 months after the passing of risk, it can be assumed that this defect had already existed at the time of the passing of risk, unless this assumption is inconsistent with the type of the affair or the defect.

7. Product liability, Product recall, indemnity against liability, insurance coverage

- 7.1 If any product-liability claims or other claims are raised against us because of defects mentioned under item 6.1, the contractor has to indemnify us from these claims after the first request if and to the extent to which this damage was caused by a defect in the delivery or service provided by him.
If there are cases of fault-based liability, this however, only applies if the contractor can be blamed for fault. Inasmuch as the cause for the damage lies in the

contractor's responsibility, he is obliged to prove evidence in this respect.

- 7.2 In all the cases described under item 7.1, the contractor bears all the costs incurring in this context, especially as to our legal representation and any possible product recall activities. The contractor will be informed about the contents and the scope of such product recall activities as far as it is possible and reasonable. We reserve the right to enforce any further legal claims.
- 7.3 Items 7.1 and 7.2 are valid accordingly as far as any defects in the product can be traced back to deliveries or performances provided from the contractor's pre-suppliers or subcontractors.
- 7.4 The contractor has to take out adequate insurance against the risks of product liability including product recall activities and other risks mentioned under item 7.1 and has to provide evidence to us at any time on our request.

8. Intellectual property

- 8.1 The contractor ensures that no rights of any third party will be violated due to his deliveries and performances. In case of any claims from third parties against us in this respect, the contractor has to indemnify us on our first written request.
- 8.2 If the production, delivery, license usage or the selling of products or performances represents a violation for any patents, trademarks, copyrights or other intellectual properties, the contractor will provide us at his costs an unlimited duty-free licence for the objects in question. To avoid a violation of these rights, the ordered goods can be modified or replaced by other goods, provided that the ordered and delivered goods are equivalent. This obligation exists even if we prescribe parts of the specification, the material or the production process.
- 8.3 The information, documents, drawings, drafts or other submissions enclosed to our enquiries or orders remain our property and may not be used for other purposes without our prior written approval. These documents have to be returned to us together with the enquiry documents or after completion of the order.

9. Provision of material

- 9.1 Tubes, parts, tanks, special packaging, data, drawings, constructions and other objects provided by us remain our property and may only be used for the intended purpose. The processing of materials and the assembly of parts will be carried out on our behalf. It is understood that we are co-proprietors of the manufactured overall product in proportion to the value of the provided material which was used for this product; the contractor stores these products to which we are jointly entitled without any costs for us.
- 9.2 The contractor identifies the objects mentioned under item 9.1 as our personal property effecting separate storage and insurance. Until the time of returning them to us he bears the risk of damage and/or loss. He will use them exclusively for fulfilling his duties under this contract and return them to us without delay after our written request.
- 9.3 The contractor is obliged to place at our disposal without delay any know-how and documents he produces in connection with the completion of the contract. Any constructions, models, software and other intellectual properties he develops during the performance of the contract will be transferred to our property.

10. Venue, place of performance, applicable law

- 10.1 As far as the contractor is a businessman, a corporate body under public law or a special fund under public law, our registered office shall be the venue for any disputes resulting from this contract. However, we also may sue the contractor at his general venue.
- 10.2 The place of performance shall be the place to which the goods have to be delivered according to the order.
- 10.3 Without exception the right of the Federal Republic of Germany, which is applicable for legal relationships between domestic contract partners, shall be applied, thus the applicability of the United Nations Convention on Contracts for the International Sale of Goods is excluded.

11. Insolvency

We are authorized to terminate the contract without notice in case of an application to open insolvency proceedings for the contractor's assets, in case of an opening of insolvency proceedings or its declination for lack of assets.

In this case there is an entitlement to receive wages contrary to § 649 BGB (German Civil Code) only to the amount of the value which was traceably added to the works by the contractor.

12. Severability Clause

Should any conditions under this contract including this regulation be or become invalid in parts or as a whole or should the contract contain a regulatory gap, the validity of the other provisions or parts thereof shall not be affected. For the invalid or missing provisions the respective legal provisions shall enter into force.