

## **General terms of delivery**

### **1. General provisions**

1.1 All orders of products and services (below: deliveries) shall be based on the Customer's written statements. Any other terms and conditions of the Supplier shall not form part of the contract, even if they have been noted in the Supplier's order confirmation and have remained uncontested. Irrespective of any quotations issued, only the content of the purchase order is binding. The Supplier accepts these conditions on acceptance of the purchase order.

1.2 The Customer retains all ownership and copyright exploitation rights to drawings and other documentation without limitation. The documentation may only be made available to third parties with the prior consent of the Customer.

1.3 The Supplier must confirm or decline the purchase order immediately in writing. If the Customer does not receive the Supplier's confirmation of the purchase order within 10 days, the contract shall enter into force with the content of the purchase order. As long as the contract has not entered into force by means of the order confirmation accepting the full contents of the purchase order, the Customer shall be entitled to withdraw from the purchase order without stating reasons.

### **2. Prices, payment terms, billing**

2.1 All prices are fixed prices (including packaging) up to acceptance of the Supplier's contractual service, and are subject to VAT at the statutory rate. They include free delivery and unloading at the expense and risk of the Supplier at the delivery address specified by the Customer.

2.2 If the Supplier has been contracted to provide erection or installation services and nothing to the contrary has been agreed, the Supplier shall bear all additional costs associated with the erection or installation (travel expenses, waiting times, costs of resources, commodities and materials, scaffolding, lifting gear and other devices, fuels, lubricants, transportation costs, energy, water, fees, protective clothing or protective devices required due to the special circumstances of the installation site etc.).

2.3 The Supplier's invoice shall be paid within 30 days net, or within 14 days minus a 2% discount, unless otherwise agreed in writing between the Customer and the Supplier. The date of receipt of the invoice and the date on which the payment leaves the Customer's account shall determine the date of payment. The Customer is entitled to pay by bank transfer or by cheque.

2.4 Invoices must be submitted to the address specified by the Customer in duplicate quoting the purchase order number and all other order and delivery data. Invoices must contain a reference to the purchase order so that it is easy to compare invoiced amounts with the purchase order or clearly assign the amounts to the purchase order.

2.5 The amount of the maximum payment to be made before the Supplier submits his final account shall be limited to 90 per cent of the overall amount.

### **3. Delivery periods and delays**

3.1 The order date is the date on which the purchase order is sent. The delivery period starts on the order date. If no period has been agreed, delivery must take place immediately. Delivery before an agreed date must be agreed by the Customer. The same applies to partial, over- or under-deliveries. All legal consequences shall in any case be based on the agreed date (payment period, guarantee).

3.2 If the Supplier delays delivery, the Customer shall - insofar as it has suffered damage therefrom - be entitled to claim compensation for the delay in the amount of 0.5% per day of delay, subject to a maximum of 5% of the order value. Furthermore, after having set a reasonable period of grace the Customer may withdraw from the contract if the period of grace passes without the desired result having been achieved.

3.3 The Supplier may not claim damages on the grounds of delayed acceptance by the Customer unless the Customer is culpably responsible for the delayed acceptance (intent or gross negligence).

#### **4. Transfer of risk**

4.1 The risk transfers to the Customer as follows:

- a) in the case of deliveries without installation or erection services: on acceptance by means of receipt of the goods by the Customer or its authorised representative at the point of use;
- b) in the case of deliveries including installation or erection services: on formal acceptance within the meaning of VOB/B (German contracting rules for the award of public works contracts, part B). Implied or tacitly assumed acceptance is excluded.

#### **5. Material defects and warranty**

5.1 Any components or services which display material defects within the period of limitation, regardless of the period of operation, shall at the discretion of the Customer be repaired, replaced or repeated free of charge.

5.2 Warranty claims shall be subject to a period of limitation of 5 years unless otherwise agreed in individual contracts with the Supplier. The period starts on formal acceptance of the delivery/service by the Supplier. The precondition for formal acceptance is full completion of the works to be performed and provision of full documentation for the services rendered.

5.3 In the event of material defects within the warranty period, the Supplier shall be obliged to undertake repairs or provide and process replacements on site at its own expense within a reasonable period of time. Should the subsequent remedy fail or if the Supplier fails to comply with the request to repair faults within a reasonable period of time specified by the Customer, the Customer shall be entitled to have the faults repaired at the Supplier's expense without setting a further deadline.

5.4 In the event of material defects, the Customer shall be entitled to withhold payments to an extent in reasonable proportion to the defect concerned, and shall retain full entitlement to a discount.

5.5 The Customer shall report any defects immediately after discovering them. If a departure from the agreed quality or impairment of the serviceability of the goods delivered are only discovered at a later date (e.g. as a result of functionality testing after installation of the item in a complex system), the defect shall still be regarded as having been reported immediately regardless of the delivery date, and the rights and obligations of the Customer and Supplier set out in clauses 5.1 - 5.4 shall apply.

5.6 If the item ordered is faulty within the meaning of the German Product Liability Act and a claim is made against the Customer on these grounds, the Supplier shall fully indemnify and hold the Customer harmless.

5.7 In the event of variances in the quantities or qualities delivered, the Supplier shall reimburse all expenses arising in connection with additional checks, packaging, returns or storage etc.

#### **6. Working on the Customer's premises or construction sites**

6.1 Should the Supplier perform work for the Customer (e.g. on one of the Customer's premises or the Customer's/end customer's construction sites), he shall adhere to the Customer's or end customer's fire, employee, environment protection, safety or other instructions and rules. The Supplier must himself find out whether the Customer has any such instructions and rules or request them from the Customer. The Supplier shall be liable to the Customer for any loss or damage caused by acting in contravention of these provisions.

#### **7. Defects in title**

7.1 The Supplier is obliged to perform the delivery free from industrial property rights and third-party copyrights. Insofar as a third party makes a justified claim against the Customer on the grounds of infringement of industrial property rights, the Supplier shall be liable to the Customer and shall indemnify and hold him harmless in this regard.

## **8. Retention of title by third parties, prohibition of assignment, offsetting, transfer**

8.1 All deliveries to the Customer shall be made free of retention of title clauses and third party rights.

8.2 Claims resulting from deliveries to the Customer may only be assigned with the express prior written permission of the Customer.

8.3 The Customer is entitled to offset counterclaims, including those which are not yet due or those of the Supplier's group companies, and the Supplier shall not be entitled to contest such offsetting.

8.4 The Supplier may not transfer his contractual rights and obligations to third parties without the Customer's consent.

## **9. Impossibility**

9.1 If it should become impossible to undertake a delivery, the Customer shall be entitled to demand compensation unless the Supplier was not responsible for the impossibility. This compensation is to be limited to 10% of the value of that part of the delivery that cannot be put into useful operation on account of the impossibility. This restriction does not apply in cases of mandatory liability on account of intent or gross negligence. This does not affect the Customer's right to withdraw from the contract.

## **10. Other provisions**

10.1 The Supplier is obliged to take back packaging free of charge at the Customer's request.

10.2 Any surcharges imposed by the Supplier, such as for opening packaging units, failure to meet minimum order quantities or flat rates for processing, shall only be paid if expressly agreed with the Customer in advance.

10.3 The Supplier shall ensure that he has fully taken into account all necessary circumstances that may influence pricing and has included all costs necessary to ensure overall performance of services fit for purpose. In particular, he shall refrain from making any additional demands for costs which he has accidentally failed to calculate for services forming part of the overall performance of services fit for purpose.

10.4 The place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the court of competent jurisdiction at the location of the Customer's head office. These terms and conditions shall be governed exclusively by German law.

10.5 Any changes or additions to the purchase order or these General Terms of Delivery and the cancellation of this clause must be made in writing in order to be valid. Should any provisions of the purchase order or these General Terms of Delivery be or become legally ineffective or unenforceable, this shall not affect the validity or enforceability of the other provisions of the contract. In the event of legally ineffective arrangements or in the event of omissions, the German contracting rules for the award of public works contracts (VOB parts B and C) in the version valid on the date of the purchase order shall be deemed to have been agreed mutually between the Customer and the Supplier (including for pure delivery orders).

The German version of these Terms and Conditions of Delivery shall prevail.

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