

# General Terms and Conditions for the Purchase of Goods

## 1. Scope

- 1.1 The relationship between the Supplier and Küster - hereinafter Buyer - is governed exclusively by these General Terms and Conditions for the Purchase of Goods. Contradicting or deviating conditions of the Supplier shall apply only, if the Buyer by express agreement has given written consent. These General Terms and Conditions for the Purchase of Goods shall also apply if Buyer accepts delivery of goods under the existence of the seller's contradictory or deviating Standard terms not being subject of the contract.
- 1.2 Changes and completions of these General Terms and Conditions for Purchase of Goods have to be in a written form.
- 1.3 These terms and conditions shall govern any future individual contract of purchase between Buyer and Supplier to the exclusion of any other terms and conditions.

## 2. Orders

- 2.1 Order and confirmation as well as changes and completions of order and confirmation have to be in a written form. They can also be effected by electronic data transmission or by electronic readable data media. Oral agreements and side-agreements before, at or after completion of the contract need a written confirmation by the Buyer.
- 2.2 The Supplier has to accept an order within the time limit of two weeks. If the Supplier does not, the Buyer has the right to withdraw his order.
- 2.3 The Buyer is allowed to demand reasonable changes of the construction and the design of the Goods. Effects with respect to additional and reduced costs as well as with respect to fixed times for delivery are to be solved by an adequate mutual agreement.
- 2.4 Any records and documents produced jointly by Supplier and Buyer for an offer, especially drawings, calculations and illustrations, belong exclusively to the Buyer. They must not be communicated to a third party without express written agreement of the Buyer.
- 2.5 Already at the time of the submission of his offer the Supplier has to point out possible defects to the Buyer, especially with respect to the observance of the actual technical and scientific state of the art, the environmental regulations or technical suitability.
- 2.6 The Supplier may not perform orders by commissioning third parties without written consent of the Buyer.
- 2.7 Forecasts with respect to future requirements of goods by the Buyer which exceed a period of twelve weeks do not create any obligations on the side of the Buyer to accept corresponding deliveries of the Supplier.

## 3. Due Dates for Delivery

- 3.1 Due dates for delivery fixed in the contract or the order of purchase being subject to the contract are binding. The fixed due date is considered to be met, if the Goods arrive within the fixed time at the Buyer or the address of delivery given by the Buyer.
- 3.2 The Supplier has to inform the Buyer without undue delay and in written form, when he can perceive that the due date can not be met. The Supplier has to take all necessary steps to meet the agreed due date at his own expense.
- 3.3 If the Supplier fails for any reason whatsoever to effect delivery on due date the Buyer shall be entitled to recover from the Supplier any loss suffered by reason of such failure. The Buyer is entitled to demand a lump-sum payment for delayed delivery of 1% of the total contract price for each full week of delay, but not exceeding an amount of 10% of this sum. The Supplier may prove, that his delay has caused no or a substantially lower damage. Further statutory claims of the Buyer remain reserved. In particular the Buyer is entitled to withdraw from the contract and to demand damages for non-performance upon expiry of an adequate deadline set by the Buyer.
- 3.4 The acceptance of the delayed delivery without reservation by the Buyer does not imply a waiver with respect to the above mentioned claims of the Buyer.

## 4. Packaging, Delivery and Assembly

- 4.1 Unless otherwise agreed, the Supplier has to pack the Goods properly and as customary in trade. As far as the Buyer does not prescribe special packing, the Supplier shall use only packing, which consists of non-polluting materials, which can be used for recycling without restrictions. On request of the Buyer the Supplier has to take back packing material at his own expense at the gate of the Buyer.
- 4.2 If the address of delivery is not the address of the Buyer, the Supplier is obliged to send an advice of dispatch to the Buyer.
- 4.3 The risk of damage to or loss of the goods is born by the Supplier until delivery to the premises of the Buyer or the address for delivery given by the Buyer.
- 4.4 Unless otherwise agreed in writing, delivery has to be effected by the Supplier free of charge.
- 4.5 In all delivery papers the numbers of order, project and parts have to be stated.
- 4.6 If necessary and not expressly agreed otherwise, mounting, assembly and starting of operation is part of the performance of the Supplier, who has also to bear related costs.

## 5. Inspection and Notification of Defects

- 5.1 The Buyer shall notify defects, as soon as they can be detected in the orderly course of business, without undue delay to the Supplier.
- 5.2 The Supplier waives the objection of delayed notification of defects (§ 377 of the German Commercial Code).
- 5.3 In case of justified complaints the Buyer is entitled to demand a lump-sum for administrative expenditures of 150 Euro for each test report. In case the delivery does exceed the amount of goods actually ordered, the Buyer is entitled to demand a lump-sum of 120 Euro for administrative expenditures.

## 6. Quality and Documentation

- 6.1 The Supplier is obliged to comply with the technical specifications, the newest technical state of the art, the generally accepted rules of technology and the applicable safety regulations. Changes in the manufacturing of the goods are only allowed with the prior written consent of the Buyer. Directions by the Buyer to comply with technical data or testing regulations do not relieve the Supplier from its obligation to deliver goods that are free of defects and suited for the agreed or common use.
- 6.2 The Supplier shall regularly test the quality of the goods and inform the Buyer, should the occasion arise, on possibilities to improve the given quality of the goods.
- 6.3 Kind and extent of quality tests are to be agreed between the parties. The Buyer can demand at all times, that the Supplier does comply with tests that are customary in the industry or specific to a certain product.
- 6.4 Documents concerning quality tests of the contract products shall be retained by the Supplier for at least ten years and shall be delivered to Buyer on his request. For D - parts the documents shall be retained for 15 years.
- 6.5 The delivered products must comply with regulatory standards currently in force, especially with those of the European Union. The Supplier is liable for any delays caused by lacking or incorrect declarations of conformance. If the Supplier is responsible for faulty or delayed samples, the Buyer is entitled to demand any costs thereby caused to him.
- 6.7 The Supplier is obliged to enter all necessary material information into the International Material Data System (IMDS).

## 7. Invoice and Payment

- 7.1 Invoices in any case have to be sent to the Buyer in duplicate with the statement of the number and date of order.

- 7.2 Under the condition that delivery complies with the contractual terms, payments shall be made, unless agreed otherwise, on the 25th of the month following delivery with a 2% discount.

## 8. Warranty

- 8.1 The Supplier warrants that all goods will be free from defects in material and workmanship. The supplier especially warrants that the goods have the agreed quality, that the goods are suited for the use intended by the parties, that with respect to technical quality and design the goods comply with the technological state of the art and that the data given by the Buyer for material, performance or efficiency are observed.
- 8.2 The Supplier guarantees that the delivered goods comply with statutory provisions and applicable regulations and norms and that the use as intended by the parties does not infringe rights of third parties.

## 9. Extent of warranty

- 9.1 To the extent the Supplier is obliged to repair defective contract goods or to deliver replacement free of charge, the Supplier has also to pay all expenses necessary for repair or replacement, including costs for transport, working costs and costs for materials, even if the Buyer has already settled these costs. The Supplier is obliged to bear the costs that are necessary to detect a defect and its cause as well. The Supplier shall be liable for all damages occurring in course of the repair. The supplier shall also be liable for damages caused to other properties of the Buyer in course of the repair.
- 9.2 Costs of repair or replacement especially comprise the costs for packing, transport and disassembly and assembly. Time spent for repair or replacement by the Buyer has to be compensated adequately.
- 9.3 In the case of frequently occurring damages with the same cause of defect („serial damages“) the Supplier is obliged to make available as soon as possible contract goods without defects for the series and for repair or replacement. The Supplier is liable for campaigns to defend against further damages, especially in case the defective parts are removed preventively, if the parts are removed due to defects of the parts manufactured or delivered by the Supplier. In this case he is liable for all costs and expenses including the costs of a recall campaign.
- 9.4 The period for warranty is, unless a longer period is agreed upon, 24 months, beginning with handing over of the contract goods. In case of replacement or repair of contract goods the warranty period with respect to replaced or repaired goods begins anew. If in case of a serial damage a default is detected within the period for warranty, the following serial damages are thought to have occurred within the period for warranty as well. Declarations and legal actions with respect to the first case of damage are always valid for all serial damages.
- 9.5 To the extent the foregoing paragraphs with respect to warranty do not provide for deviations, the statutory provisions shall apply.

## 10. Product Liability

- 10.1 The Supplier has to hold harmless Buyer from and indemnify him against all claims of third parties, even based on strict liability independent of fault, if the product delivered by the Supplier is the cause of the damage. This provision shall also apply if and to the extent the Supplier is liable to the third party directly due to strict liability independent of fault.
- 10.2 In case a defect has been caused by both parties, the damage shall be adequately apportioned.
- 10.3 The supplier shall cover with insurance the risk of product liability by entering into appropriate insurance agreements with an sufficient maximum insured amount.

## 11. Intellectual Property Rights

- 11.1 The Supplier is liable for all claims of third parties based on the infringement of intellectual property rights, if such claim is based on the use of the contractual goods as intended by the parties. The Supplier has to hold harmless the Buyer and his customers from and indemnify them against all claims resulting from the infringement of such intellectual property rights.
- 11.2 Copyrights of drawings, samples and other documents the Supplier has produced for the Buyer belong exclusively to the Buyer.
- 11.3 In case software is part of the performance of the Supplier, the Buyer is granted the right to freely use the software without limitation in time to the extent it is required for the use of the contract goods as intended by the parties. The Buyer is entitled to demand that it is secured that he can access the source code in case the Supplier is insolvent or shows sustained signs of non-performance.

## 12. Confidentiality

- 12.1 The Supplier is obliged, to keep in strict confidence all information which is received in connection with the business relation to the Buyer.
- 12.2 Drawings, samples and other documents may not be given or otherwise made available to third parties.
- 12.3 The obligation of confidentiality shall remain binding on the parties even after the end of the supply relation.

## 13. Properties of the Buyer

- 13.1 Materials and tools made available by the Buyer remain in all cases, even if changed by the Supplier, the exclusive property of the Buyer. The Supplier shall carry out, at its own expenses, the ordinary repairs and keep in custody and use the properties with the utmost care. The Supplier may transfer the tools to third parties only with prior written consent of the Buyer.
- 13.2 Drawings, samples, specifications for delivery, documents of offers and other documents made available to the Supplier remain the exclusive property of the Buyer. The Supplier must not use these properties for other purposes without the prior express consent of the Buyer.
- 13.3 The Supplier is obliged to use tools of the Buyer or tools of the Supplier, that have been especially manufactured for the production of goods for the Buyer, exclusively for the production of the contracted goods.

## 14. Secondary Obligations of the Supplier

- 14.1 The Supplier is obliged, to mark the contracted goods as prescribed by the Buyer.
- 14.2 The Supplier has to guarantee the delivery of replacement parts for a period of 15 years, beginning with the last delivery of the contracted goods.
- 14.3 The Supplier may point to the business relation with the Buyer in advertising materials only with express written consent of the Buyer.

## 15. Miscellaneous

- 15.1 Place of performance is the Buyer's principal place of business, which shall also determine the venue for all disputes arising out of this contract.
- 15.2 The law of Federal Republic of Germany is solely agreed upon with the exception of the United Nations Convention on the International Sale of Goods.
- 15.3 If any term or condition of this contract or other agreements is or becomes null and void, then all other terms and conditions shall remain in full force and effect. The parties are obliged to forthwith replace the void provisions and remedy the omission by agreeing on such provisions as shall come as close to the economic effect intended thereby as shall be legally permissible.
- 15.4 The Buyer's home country language version of these General Terms and Conditions for the Purchase of Goods shall control even if translations into other languages should be prepared and accepted.