

General Purchasing Terms and Conditions of battenfeld-cincinnati Germany GmbH (as of: Nov. 2016)

I. General/Validity

We place purchase orders solely on the basis of our General Purchasing Terms and Conditions; Supplier's conflicting and differing terms and conditions shall not be accepted unless we have given our express and written consent thereto.

II. Offer/Conclusion of contracts

1. If Supplier does not accept a purchase order from us within 2 weeks of receipt, we shall no longer be bound by the offer.
2. Purchase orders, contracts of any nature and any changes or additions thereto shall only be binding if effected in writing, by data transfer or by machine-readable data media.
3. Execution of our purchase orders shall constitute acceptance of our terms and conditions.

III. Prices, invoices, payment, assignment of claims, offset, right of retention

1. The agreed prices are fixed prices and are quoted, unless agreed otherwise in the specific contract, free receiving plant including packaging, freight and transport insurance net of the value-added tax applicable at the time. Unless specifically agreed otherwise in the pertinent contract, the definition of prices shall be as per the Incoterms as amended from time to time and the provisions for the uniform interpretation of contractual clauses of the International Chamber of Commerce, Paris.
2. Payment shall be rendered either with deduction of 3% cash discount within 30 days of delivery/performance and receipt of a due and proper invoice and o.k. inspection of the goods or after 90 days strictly net.
3. Supplier shall not be entitled to offset purported claims against our Company without our prior consent, unless the claim is undisputed or legally final and binding.
4. Supplier shall not be entitled to assert a right of retention for counterclaims that are not undisputed or legally final and binding unless those claims arise from the same contractual relationship.
5. Contractual claims against us under or in conjunction with the purchase order shall be time barred after 2 years from the date the consignment and invoice were received.

IV. Dispatch, delivery, transfer of risk

1. All order references and numbers must always be repeated in documents pertaining to our purchase order (order confirmation, delivery note, freight documents, invoices, etc.).
2. Delivery notes and invoices shall be submitted in duplicate.
3. Lorry deliveries shall only be accepted Mondays to Fridays between 7:30 am and 2:30 pm or by prior arrangement.
4. We shall accept higher costs and charges due to variance from the normal dispatch procedures or the mode of shipment we stipulated (road, rail or suchlike) only if this has been agreed in writing. This shall apply in particular if goods have to be expedited to us due to missed dead-lines.
5. All consignments shall be effected free of freight and incidental costs. Our specific shipping instructions must be heeded in full.
6. Shipping is at Supplier's risk. The risk of any deterioration, including accidental loss, shall be borne by Supplier up to delivery to our requested shipping address or point of use.
7. Supplier shall be liable for the consequences of incorrect bill of lading declaration. A dispatch note shall be submitted immediately after the sending of every consignment. Supplier shall bear the costs arising if the stipulated receiving unit, department, battenfeld-cincinnati article number, order number, subject comment or issue comment are missing from the shipping documents.
8. We shall accept part shipments only after our prior written consent. If part shipments have been agreed, the outstanding balance must be shipped.
9. In the event of earlier delivery than agreed, we reserve the right to return the goods at Supplier's expense. If goods from such premature de-livery are not returned, we shall hold the goods until the delivery date at Supplier's expense and risk. Payment of the invoice shall be deemed timely with respect to the agreed deadline.

V. Delivery date, default with delivery, liquidated damages, acceptance of goods, rescission

1. The agreed deadlines are binding. Definitive for compliance with the delivery date or period is receipt of goods of fault-free quality at our stipulated delivery address or point of use and timeliness of the affected acceptance.

2. If Supplier realises that the agreed deadlines cannot be met for whatever reason, Supplier shall notify us in writing immediately, stating the reasons for and the duration of the delay.
3. In the event of default with delivery, we shall be entitled to demand liquidated damages of 0.1% of the supply value per working day of default, subject to a maximum of 5% of the supply value. We shall be entitled to declare reservation of liquidated damages within 10 working days commencing with receipt of the late delivery.

VI. Environmental protection and health and safety clause

Supplier undertakes to take all necessary environmental and health and safety precautions with respect to the subject matter and to comply with all public authority and statutory requirements. We reserve the right to demand a certificate from the pertinent liability insurance association that shows compliance with all the health and safety regulations.

VII. Specification, warranty, liability

1. Supplier warrants that all items it supplies and all services it renders are to the latest state of the art as of the time of delivery/performance and comply with the pertinent legal provisions and regulations and with the guidelines of public authorities, employers' liability insurance associations and professional organisations. Supplier shall first obtain our written consent if deviations from such regulations are necessary in particular cases. This provision shall be without prejudice to Supplier's warranty and guarantee obligation.
2. We shall be entitled to stipulate the manner of subsequent performance even in the case of contracts for work. Section 439 Civil Code shall apply mutatis mutandis.
3. After fruitless expiration of a reasonable grace period we have set for a fault in the supplied product or work rendered, we shall be entitled to remedy the fault ourselves and demand reimbursement of the necessary expenditure if Supplier has not rightly refused to render subsequent performance. In such cases, the statutory provision for self-help in the case of contracts for work (Section 637 Civil Code) shall apply for con-tracts of sale mutatis mutandis. Regardless of the statutory provisions, we shall be entitled in urgent cases, especially to ward off the acute risk of considerable damage, to have the fault remedied at Supplier's expense without setting a grace period for subsequent performance.
4. If we have to take back a product, accept a price or remuneration reduction or pay a customer damages or indemnification due to a fault in the item supplied or work rendered by Supplier, our warranty claims against Supplier (Sections 437, 634 Civil Code) shall not require an otherwise required setting of a grace period.
5. We can demand from Supplier reimbursement of the expenses that we have to bear with respect to our subsequent performance obligations towards our customers (especially freight, travel, work and material costs) if the fault raised by our customer against us was already present when the risk passed to us.
6. The warranty period shall be 24 months unless expressly stipulated otherwise. It commences with provision of the item to us or the third party we have stipulated at the point of receipt or use we have stipulated. In so far as acceptance is required by law or contract, the warranty period shall commence upon successful acceptance. If acceptance of an item is delayed without Supplier being answerable therefor, the warranty period shall commence at the latest 12 months from provision of the said item for acceptance.
7. If a fault occurs during the first 12 months of the warranty period, it shall be assumed that this fault was already present upon transfer of risk, unless that presumption is incompatible with the nature of the item and the fault.
8. All of the aforementioned and the statutory warranty rights shall be time barred 24 months from notification of the complaint within the warranty period, unless stipulated otherwise by law or contract. However, the time bar shall not apply before the end of the warranty period. The time bar for the aforementioned and the statutory warranty rights shall apply at the earliest as of the date when we have met any recourse claims from our customer with respect to the fault. This any of period shall end at the latest five years after Supplier delivered the item to us or we accepted the work.
9. If Supplier satisfies its duty of subsequent performance by way of fault rectification, the time bar for that performance shall commence anew from the acceptance of the said fault repair work. If Supplier satisfies its duty of subsequent performance by way of replacement delivery, the time bar for the product / work as replacement shall commence anew from delivery / acceptance thereof.

10. In the case of legal faults, Supplier shall hold us free and harmless for any third-party claims that may arise. The time bar for legal faults shall be three years. This time bar shall commence at the end of the year in which the claim arose and we became aware or should have become aware without gross negligence of the circumstances giving rise to the claim and who caused the same; regardless of knowledge or grossly negligent ignorance ten years from when it arose.
11. If Supplier has doubts as to the manner of performance we request or finds errors in our documentation or drawings, this must be notified to us in writing without undue delay.
12. Inspection of the goods for variance in quality and quantity is timely if carried out within 10 working days of delivery; the complaint is timely if it is received by Supplier within 10 working days of the fault being found.
13. Signing for receipt of items and acceptance or approval of submitted drawing shall not constitute waiver of our warranty and other rights.
14. The fictitious acceptance of Section 640 Subsection 1 Sentence 3 Civil Code is hereby excluded.
15. Acceptance by certificate of completion pursuant to Section 641a Civil Code is hereby excluded.

VIII. Documents for purchase orders, items

1. If Supplier produces tools, forms, models, print plates etc. to our instructions or design material, the samples and documents provided shall be returned unsolicited within 10 days of the order being completed.
2. Supplier expressly undertakes not to make available or provide documentation, samples and items made available to it to any third party without our written consent, nor shall such items be furnished to third parties without our approval.
3. Tools, forms and devices shall become our property after complete payment has been rendered therefor. Handover of the tools to us shall be replaced by Supplier's duty of retention and their loan to Supplier to carry out our orders.
4. Supplier shall be liable for any loss incurred by dint of the tools, forms or devices being lost, damaged or misused. Supplier shall also bear the risk of their destruction.

IX. Product liability, indemnification

1. If recourse is taken against us due to safety regulations breached by Supplier or due to our products not meeting domestic or foreign product liability legislation because of a product we have sourced from Supplier, we shall be entitled to demand indemnification of such loss from Supplier in so far as it was due to Supplier's products. The same shall apply for actions taken against us under product safety legislation.
2. Supplier undertakes to hold us free and harmless for third-party damages claims by dint of its product responsibility upon first demand. In this context, Supplier also undertakes to reimburse any expenses arising from any recall action we undertake.

X. Industrial property rights

1. Supplier warrants and covenants that all deliveries are free from third-party industrial property rights and in particular that the delivery and use of the subject matter shall not infringe patents, licenses and other industrial property rights of third parties within Germany. In so far as Supplier is aware that we also sell its products in other countries, the above shall also apply for those countries.
2. Supplier shall hold us and our customers free and harmless for third-party claims arising from breaches of industrial property rights and shall bear all the costs incurred in conjunction therewith.
3. We shall be entitled to secure the rights to use the items and services in question from the pertinent party with the due care and duty of a diligent merchant and at Supplier's expense.

XI. Sundry, legal forum, place of fulfillment, severability clause

1. Our Assembly Terms and Conditions shall also apply for assembly work.
2. Supplier shall provide us with drawings of machine parts etc. that are subject to wear and tear and also assembly drawings and other such documentation free of charge. We and third parties we engage shall also be entitled to use these drawings to produce spare parts, to make changes and suchlike thereto. In such cases, claims from breach of Supplier's rights shall be excluded.
3. No remuneration of any nature shall be rendered for visits, producing plans or suchlike. The submission of quotations is always free of charge.
4. If Supplier is a merchant, a public-law legal entity or special fund within the meaning of the German terms, the legal forum shall be the

court of law with jurisdiction over our main offices or the subsidiary receiving the delivery. However, we shall be entitled to sue Supplier within its general legal forum. The same shall apply if Supplier does not have any general jurisdiction in Germany, or moves its place of abode or domicile from Germany after conclusion of agreement, or its place of abode or normal domicile is not known at the time the legal action is filed.

5. Unless expressly agreed otherwise, the place of fulfillment for the delivery obligation is the place of receipt or use that we stipulate.
6. If any passages of these General Purchasing Terms and Conditions are void, this shall not affect the remaining provisions therein.
7. In addition, the above shall be governed only by the law of the Federal Republic of Germany to the exclusion of the UN Convention Relating to a Uniform Law on the International Sale of Goods of 11 April 1980.
8. The contract language shall be German. In so far as the parties also use any other language, the German version shall be binding.