

GENERAL PURCHASING CONDITIONS OF PHÖNIX ARMATUREN- WERKE BREGEL GMBH

1. General

I. These conditions will become part of the purchase contract. Any of the supplier's delivery conditions that are contrary to or deviating from these purchasing conditions or any other of his restrictions will not be accepted, unless the orderer has expressly agreed to them in writing in every single instance.

II. Any other agreements, amendments and supplements will only be valid if the orderer has given his or her consent in the written form.

2. Offer

I. The supplier will submit his offer exactly in accordance with the inquiry and he will expressly point out any deviations.

II. The offer will be submitted free of charge and will not oblige the company or persons who send the inquiry. Estimates of costs will only be paid for upon special agreement.

3. Order

I. Orders and order amendments must be in writing. The contents of a verbal or phone discussion is doubtly only binding if this was confirmed in writing.

II. Every order and each amendment of an order will be confirmed in writing by the suppliers and will be treated separately in the whole correspondence.

III. The following items will be indicated in all documents : purchase department, complete order number, order date and the orderer's reference.

4. Delivery time

I. The delivery time will start with the order date. As soon as the supplier can anticipate that he will not be able to meet part or all of his contractual obligations in due time, he will immediately inform the orderer indicating the reasons and the likely term of the delay. Should the supplier fail to give this information he will not be entitled to quote the impediment to the orderer.

II. If the supplier does not fulfil his obligations within the agreed delivery time he will be liable according to the legal regulations, notwithstanding a possibly agreed penalty for delayed delivery within the scope of § 340 section 2 of the German civil code. If a penalty has been agreed it can be made before the settlement date of the final payment without the necessity of a reservation as per § 341, section 3 of the German civil code, § 11, section 4 of the German Construction Contract Procedures/B.

5. Guarantee, notification of defects, liability

I. The supplier will guarantee that the supplied object is free from defects that affect its value or suitability, that it has the agreed or guaranteed quality, that it is suitable for the purpose intended by the contract, that it corresponds to the generally accepted technical standards, and that it corresponds to the latest prescriptions by the authorities, to the product safety act, to the relevant valid technical safety requirements, and to the occupational safety and accident prevention regulations. If the supplied product does not correspond to these rules, the orderer can at his discretion request the elimination of the defect or the delivery of a product free of defects; he will be authorized to withdraw from the contract according to the legal stipulations or to reduce the purchase price, or to request indemnity or compensation because of futile expenses.

If the supplier has assumed guarantee for the quality or durability of the supplied product the orderer can furthermore also enforce his claim to the guarantee. This will, however, not apply to defects or damages of the supplied product that have been caused by

- a. regular wear and tear,
- b. improper handling by the orderer.

The orderer will immediately notify the supplier about defects of the supplied product, i.e. as soon as they have been identified in the course of the normal business process. The before-mentioned rules will apply analogously to services such as assembly, maintenance, etc.

II. Unless expressly otherwise agreed, the legal statutory limitations will apply.

III. The supplier's guarantee will also apply to the parts manufactured by subcontractors.

IV. For the notification of defects the statutory limitation will be extended by the period from the notification of defects to their elimination. If the supplied product is completely remade the statutory limitation will start again, in case of partial remake it will restart for the remade parts.

V. The parts claimed for based on the guarantee will be at the orderer's disposal until their replacement and after replacement they will become the supplier's property.

VI. In urgent cases or when the supplier delays the elimination of the defects or is unsuccessful with their elimination, the orderer will be entitled to eliminate the defects at the supplier's expense or to avail himself of the other guarantee rights as per item 5.1.

VII. The supplier's statutory guarantee will not be affected by the orderer's acceptance of the deliveries and services.

VIII. The supplier will indemnify the orderer from claims based on producers' liability as well as on the product liability law inasmuch as the supplier or his subcontractors have caused the product-related defect involving liability.

IX. For the rest the supplier will be liable according to the legal regulations

6. Testing

I. If the supplied product is to be tested, the supplier will bear the material and his personal testing costs.

At least one week in advance the supplier will bindingly notify the orderer in writing that the products are ready for testing and he will agree with him a testing date. If the product to be supplied is not made available on this date the orderer's personal testing costs will be borne by the supplier.

If repeated or further testing is required due to ascertained defects the supplier will bear all material and personal costs. The supplier will bear the material and personal costs.

7. Insurances

I. Unless otherwise agreed transport insurance will be contracted exclusively by the orderer.

II. The supplier will contract at his expense a relevant third party liability insurance for damages that are caused by himself or his staff or by services rendered and work or objects delivered by his authorized agent. At the orderer's request the amount of the insured sum per occurrence of damage is to be proven.

III. Contracting of a special assembly insurance beside the third party liability insurance as per item 7.2 will have to be agreed by the orderer and supplier in every single case.

IV. The machines, apparatuses, etc. given to the orderer as items on loan will be insured by the latter against the usual risks. Any further liability of the orderer for the destruction of and/or damage to the let machines, apparatuses, etc. will be excluded – except in cases of willful or negligent actions.

8. Shipping instructions

I. On the shipping date the supplier will send separately from the goods and the invoice a detailed delivery note for every single consignment. A delivery note and packing slip will be enclosed with each delivery.

The references and notes regarding the unloading points as prescribed by the orderer will be fully shown on all delivery notes, shipping orders, packing slips, waybills, invoices, and on the outer packaging, etc.

II. In principle, the supplier will pack, mark and dispatch hazardous products according to the valid national/international regulations. The shipping documents will show - beside the hazard category – also the other data determined in the relevant transport regulations.

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IV. All consignments that cannot be taken over due to the nonobservance of these regulations will be stored at the supplier's risk and account. The orderer will be entitled to ascertain the contents and condition of such consignments. Tools, dies and armamentariums will not be loaded together with the objects to be supplied.

9. Invoicing

I. Should the supplier reduce his prices or improve the conditions within the period from the order to delivery, the prices and conditions that are valid on the delivery date will apply.

10. Invoice and payment

I. The wording, order of the text and the prices on invoices will correspond to those on the order. Any excess or deficiency will be indicated separately on the invoice.

II. The terms of payment will start on the fixed date but not before the receipt of the goods and the invoice.

III. Payment will not mean acceptance of conditions and prices. The date of payment will not influence the supplier's guarantee and the right to notification of defects.

11. Documentation

I. All drawings, standards, guidelines, analysis methods, formulations, and other records that have been handed over by the orderer to the supplier for the manufacture of the object to be supplied, as well as the documentation prepared by the supplier based on the orderer's special indications will remain the orderer's property, and the supplier will not use them for other purposes, or copy them or make them available to third parties. At the orderer's request they will be immediately handed over to him together with all copies and reproductions. The orderer will reserve the industrial property rights to all the documentation handed over to the supplier.

The supplier will deem the inquiry and order and all the work referring to the latter as trade secrets and he will treat them accordingly in confidentiality. He will be liable for all damages caused to the orderer due to the infringement of one of these obligations.

The supplier will submit to the orderer all documentation which is necessary for discussions regarding the object to be supplied. The supplier will be exclusively responsible for such discussions or other participations by the orderer, and the supplier will not be exempt from any guarantee or other obligation.

II. The supplier will place at the orderer's disposal - in due time, unrequestedly and free of charge - any kind of records that the latter needs for the use, erection, assembly, processing, storage, operation, maintenance, inspection, and repair of the object to be supplied.

III. The standards and guidelines indicated by the orderer will be applicable in their latest version. The supplier will request the orderer's works standards and guidelines in due time unless they have already been placed at his disposal.

If bankruptcy or composition proceedings are instituted regarding the supplier's assets and if the supplier has not or not completely supplied the products to us, we will be entitled to withdraw from the contract or to cancel the contract without any notice in the case of continuous contractual obligation.

12. Objects

I. Moulds, models, dies and tools, films, etc. that have been manufactured by the supplier for the execution of the order will become the orderer's property upon payment, even if they are still held by

the supplier. At request these objects will be handed over to the orderer.

13. Assembly, maintenance, inspections, repairs, etc.

I. If assembly, maintenance, inspections, repairs, etc. are carried out in one of orderers' works, the safety and disciplinary rules for outside companies that carry out work in the orderer's works will be applicable.

These will be notified prior to the start of work.

II. The orderer will not bear the risk for the supplier's or his staff's property brought into the orderer's works.

14. Patent infringements

I. The supplier will be liable for the non-infringement of patents, licences or third parties' property rights by the delivery and use of the supplied objects. Any licence fees will be borne by the supplier.

15. Advertising material

I. Reference to business relations with our company indicated in informative and advertising material will only be allowed with the orderer's express consent in the written form.

16. Applicable law, interpretation of clauses, etc.

I. The German law will be applicable. The application of the UN Uniform Law on the International Sale of Goods of 11/04/1980, valid as of 01/01/1991, will be excluded.

II. Clauses customary in trade will be interpreted according to the valid INCOTERMS.

17. Origin of goods

I. The supplied goods will correspond to the origin-related conditions of the most favoured nation agreement of the E.C., unless something to the contrary has been expressly indicated in the order confirmation.

18. Place of fulfilment and jurisdiction

I. The receiving centre scheduled by the orderer will be the place of fulfillment unless otherwise indicated in the order. Korbach will be the place of jurisdiction.

Last update: 01/2012