

General Terms and Conditions of Purchase



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1 Scope

- 1.1 Our Terms and Conditions of Purchase shall apply exclusively. We do not accept any terms and conditions of the contractor that are contrary to or deviate from our Terms and Conditions of Purchase unless we expressly accepted them in writing. Our silence shall not be deemed to be a declaration of intent.
- 1.2 Our Terms and Conditions of Purchase shall apply even if we accept or pay for the goods or services without reservations while aware of the contractor's terms and conditions of purchase that are contrary to or deviate from our Terms and Conditions of Purchase.
- 1.3 By executing the first delivery subject to these terms, the contractor accepts the exclusive applicability of our Terms and Conditions of Purchase to all future orders.
- 1.4 Any deviating or collateral agreements must be in writing to be effective. This shall also apply to any waiver of this requirement of written form.

- 1.5 The contractor's non-acceptance of our terms shall entitle us to rescind the contract.

2 Offer, Conclusion of Contract

- 2.1 Offers submitted to us must be free of charge and non-binding. In terms of quantity, quality, design etc., the offer must comply with our enquiry and any and all drawings, calculations, descriptions and other documents provided by us.
- 2.2 The contractor agrees to confirm the execution of our order in writing within a period of one week after the order date. Should we not receive the confirmation within the period stipulated, we shall not be bound by our order anymore.
- 2.3 As part of its quality assurance obligations, before sending an order confirmation, the contractor must inform us in writing of any deviations, obvious mistakes and incompleteness contained in our enquiry and/or order or in the documents pertaining thereto, in order to enable us to correct and/or complete them. Furthermore, in case of custom-made products, the contractor shall have the obligation to review our data and to immediately inform us of any concern regarding the execution of the order.

- 2.4 Goods and services provided by the contractor without a written order from us shall neither be accepted nor remunerated.

3 Prices

- 3.1 The prices stated in the order (net of VAT) shall be binding.
- 3.2 Unless otherwise agreed upon in any individual case, such prices shall include all services and ancillary services to be rendered by the contractor as well as all incidental expenses such as costs for required certificates and inspection documents, acceptance, packaging, corrosion protection, transport including insurance (DDP in accordance with INCOTERMS 2020).
- 3.3 The contractor must inform us of any prices not expressly stated in our order in due time, however, no later than one month before delivery. Such prices are subject to our approval.

4 Goods and Services

- 4.1 The date of delivery for goods and/or services stated in the order shall be binding.
- 4.2 The date of receipt of the goods at our premises shall be authoritative for establishing whether the date of delivery for goods and/or services was complied with or not.
- 4.3 Unless otherwise agreed upon, the goods and services shall be delivered DDP (INCOTERMS 2020).
- 4.4 Unless otherwise specified by us, the place of destination / delivery shall be:
FUCHS Fördertechnik GmbH, Am Knick 18 (Tor 1 (Gate 1)), 22113 Oststeinbek, Germany
- 4.5 As a minimum requirement, the delivery must contain our order number.
- 4.6 Only the contents, types, quantities and qualities of the goods and services stipulated in our order shall be binding.
- 4.7 The contractor shall be responsible for suitable, customary packaging in compliance with statutory provisions, which provides sufficient protection of the deliverables from damage or impairment.

5 Delay in Delivery

- 5.1 The contractor shall have the obligation to inform us immediately and in writing in case any circumstances occur or are foreseeable, which may result in a delay in delivery. Such notice must contain the reasons and the expected duration of the delay.
- 5.2 In case of any delay in delivery, we shall be entitled to statutory rights without limitation (including but not limited to exclusion or limitation of liability).

6 Contractual Penalty

- 6.1 Should the contractor not comply with the agreed upon dates / terms of delivery due to a delay in delivery, it shall be obliged to pay a contractual penalty amounting to 0.5 % of the net contractual price of the total order for each business day in excess of the agreed upon date / term of delivery. The same shall apply in case of a partial delivery. The amount of the contractual penalty shall be limited to a maximum of 10 % of the net contractual price of the total order, even if several individual dates / terms of delivery were not complied with.
- 6.2 The right to assert a contractual penalty may be reserved until final payment is received. The settlement of the contractual penalty shall not release the contractor from its duty to fulfil its contractual obligations or from additional obligations to pay damages, including but not limited due to delays.

7 Passing of Risk

- 7.1 The risk for the goods and services delivered by the contractor shall pass to us at the agreed upon place of destination / delivery.
- 7.2 Services shall be deemed accepted upon our signing a confirmation of acceptance.
- 7.3 If the quality of services cannot be determined until a successive work is completed, we shall not accept such services until successful processing, operation, inspection by our customer and/or competent authorities (e.g. classification societies), as the case may be.

8 Invoicing and Payment

- 8.1 Unless otherwise agreed upon, the terms of payment shall be as follows: 3 % discount for payment within 14 days or 2 % discount for payment within 30 days or 60 days net without any deductions, in each case after contractual delivery and acceptance of the service, upon presentation of pertinent documents, if any (e.g. inspection / acceptance certificates and/or reports, analysis results, drawings, plans, instructions for use, packing lists) and upon receipt of the invoice.
- 8.2 Advance / down payments shall only be made in accordance with a separate written agreement and upon presentation of a guarantee from a major German bank.
- 8.3 Full payment for the goods shall neither be deemed to be acceptance of the performance of the goods nor an acceptance of the goods.
- 8.4 Delivery of goods or services before agreed upon dates or before the expiry of an agreed upon term shall not affect the term of payment. We shall be entitled to reject such early delivery of goods or services.

9 Defects

- 9.1 The contractor shall ensure that the delivered goods / services are free from defects of quality and title, that they have the quality agreed upon with us, they are state-of-the-art of science and technology and comply with our specifications, drawings and other execution stipulations and that no circumstances are inherent to such delivered goods / services that may void or impair their value or suitability for their usual purpose or the purpose as agreed upon in the contract concluded between us and the contractor.
- 9.2 Our and our customers' authorised agents shall be entitled to obtain information on the contractor's performance of contract during the contractor's usual business hours, even without prior notice, and to participate in the contractor's audits or organise their own audits. Should such audits reveal any defects, the supplier shall bear the costs for re-audits rendered necessary thereby.
- 9.3 To the extent feasible in the normal course of business and to the extent no quality assurance agreement exists between the contractor and our company, we must inspect the goods for deviations in quality and in quantity. We shall notify the contractor of defects within 10 days. To such extent, the contractor shall refrain from asserting the defence of delayed notice of defects.
- 9.4 In case of hidden defects and defects that are only detected in the course of initial processing, commissioning of the delivered item or in the course of inspection by our customer or by the competent authority (e.g. classification societies), the period to file a notice of defects in accordance with no. 9.3 shall begin at the time of detection.

- 9.5 This shall not affect our statutory claims based on defects. In any case, we shall be entitled, at our discretion, to demand rectification of defects or delivery of a new item from the contractor. We shall expressly reserve the right to assert damages, including damages instead of delivery.

- 9.6 As part of subsequent performance, the contractor shall have the obligation to reimburse any expenses incurred to us with regard thereto. This shall also apply to our customers' claims, if any, for transport, infrastructure, labour and material costs caused by a defective delivery.

- 9.7 We shall be entitled to rectify the defects ourselves at the contractor's expense in case of imminent danger or urgency. Urgency means that the contractor is unable to act within a period of two weeks upon the detection of defects (e.g. subsequent performance or new delivery) and/or
- a production stop is imminent,
 - a loss of production is imminent,
 - a punctual commissioning of partial or entire systems cannot be guaranteed anymore,
 - we are unable to observe a deadline set by our customers due to the defect or the duration of the rectification of the defect,
 - claims for contractual penalties and additional damages may be asserted against us by third parties.

10 Transfer, Set-off and Retention

- 10.1 The contractor shall require our prior written consent in order to transfer and/or assign to third parties in whole or in part any of its contractual claims and rights.
- 10.2 Set-off with counterclaims or assertion of rights of retention shall only be admissible if such claims are undisputed or established with legally binding effect.

11 Subcontractors

- 11.1 The contractor must inform us in writing about the employment of subcontractors, which shall not release the contractor from its obligations to us.
- 11.2 In case the contractor uses subcontractors, the contractor must make sure that such subcontractors also grant to us and to our customers the right of information and the right to perform audits to the extent described in no. 9.2.

12 Reservation of Title and Obligation of Confidentiality

- 12.1 Upon full payment, title to the goods shall devolve to us immediately. Any extended or prolonged reservation of title shall be inadmissible.
- 12.2 We hereby reserve title, copyrights and any other industrial property rights to any and all documents made available to the contractor in connection with our enquiry or order, including but not limited to illustrations, drawings, calculations, models, files and other documents.

- 12.3 The contractor shall have the obligation to treat the documents made available to it strictly confidentially and to only use them for the purpose of fulfilling the relevant contract concluded with us. Copies, reproductions etc. shall only be admissible upon our express prior consent. Upon request, the contractor must return to us all documents and any copies, reproductions etc. thereof without delay and must confirm that there are no documents and any copies, reproductions etc. in its possession anymore. Illustrations, drawings, calculations, models, files and other documents may only be disclosed to third parties with our express written prior consent.

- 12.4 The obligation of confidentiality shall survive the completion of our order without any restrictions.
- 12.5 Any internal information the contractor becomes aware of in the course of our cooperation must also be treated confidentially and must only be used for the purposes of such cooperation with us.

- 12.6 The contractor must also subject its employees - for the time during and after the end of their employment with the contractor - and its subcontractors to confidentiality accordingly.

13 Product Liability

- 13 The contractor shall agree to take out product liability insurance at its own expense with an insured lump sum of EUR 5 million per case of bodily injury / property damage.

14 Statute of Limitations and Term of Preclusion

- 14.1 Warranty claims shall be statute-barred upon expiry of 36 months after the time the risk passed.
- 14.2 Should property damage be detected within six months after the time the risk passed, we must assume that the relevant item was defective at the time the risk passed.
- 14.3 Defects of title are subject to a period of limitation of ten years from the time the contract was concluded.
- 14.4 The period of limitation shall generally be extended by the period starting at the time we send our notice of defects and ending at the time our claims based on defects are fulfilled. In case of new / substitute deliveries, the periods of limitation shall start anew.

15 Miscellaneous

- 15 The contractor shall be responsible for compliance with statutory and official provisions and requirements in connection with the fulfilment of the contract. The goods / services must comply with all applicable provisions as to security, occupational health and safety, accident prevention, relevant standards, DIN, VDE and other provisions.

16 Final Provisions

- 16.1 The laws of the Federal Republic of Germany shall apply, whereas the application of the United Nations Convention on Contracts for the International Sale of Goods shall be excluded.
- 16.2 The place of performance and jurisdiction shall be our company seat.
- 16.3 Should individual provisions of these Terms and Conditions of Purchase be or become ineffective in whole or in part, or should a gap be detected, this shall not affect the effectiveness of the remaining provisions of these Terms and Conditions of Purchase. The ineffective provision and the gap shall be replaced by a legally admissible provision that comes as close as possible to the intent of the ineffective provision.