

## General Conditions of Purchase

### I. Contract conclusion

1. We place our orders exclusively on the basis of our General Conditions of Purchase. We do not accept any other conditions that conflict with or deviate from our Conditions of Purchase. Our Conditions of Purchase apply even if we place our order with the contractor or accept the contractor's delivery without reservation while being aware of the contractor's conflicting or deviating conditions.
2. Acceptance of the contractor's goods or services or payment of such goods or services must by no means be deemed approval of contract conclusion or of the contractor's General Conditions of Business.
3. Our Conditions of Purchase also apply to all future orders placed by us even if their application is not again explicitly agreed between the contractor and us. We hereby object to and reject any counter-confirmation making reference to the contractor's Conditions of Sale.
4. All arrangements made between us and the contractor regarding the execution of the contract has to be fixed in writing in such contract.
5. The contractor is obliged to acknowledge our orders within one week from receipt. Deviations from our order in the order acknowledgement are only deemed validly agreed if we have explicitly accepted them in writing. If no appropriate acknowledgement is issued and the contractor nonetheless executes delivery or provides the service in question, acceptance by us will be made on the conditions specified in our order.
6. Generally, no remuneration or compensation is paid for visits or the preparation of quotations or the elaboration of projects, plans etc. agreements to the contrary require written form ("Schriftform").
7. Quotations have to be submitted in writing. Only orders that are placed in writing are deemed to be legally binding. In the case of an informal agreement for conclusion of a contract, our order resp. our order confirmation is deemed to constitute a commercial letter of confirmation of such agreement (so-called "kaufmännisches Bestätigungsschreiben"<sup>1</sup> under German law).

### II. Prices

1. The prices stated in our order are binding and are deemed to include, unless otherwise agreed in writing, all costs for acceptance certificates, material certificates and any other certificates whatsoever. The contractor is obliged to absolutely comply with the specifications of the goods/ services to be delivered/ provided and the wording of the order. In the case of deviations, the contractor is obliged to make specific reference to the appropriate passages resp. items that contain such deviations in his letter accompanying the quotation. The contractor is deemed bound to his quotation until expiry of the validity period stated in the order. Changes in prices require our prior written consent. Supplementary deliveries/ services and/ or changes to the deliveries/ services will only be remunerated if subsequently agreed in writing to that effect before the delivery/ service has been executed.
2. For services that are charged on a time and material basis, a time/work sheet signed by us has to be enclosed with the confirmation resp. invoice.
3. If no prices are stated in our order, the prices stated in the contractor's price list valid at the time apply, subject to usual discounts.
4. VAT is to be paid at the statutory rate valid at the time.

### III. Delivery

1. Unless otherwise agreed, delivery is made free works, duty paid (DDP according to Incoterms 2000), including packaging. Delivery is to be made to the consignee's address provided by us. If we have agreed to bear the cost of shipment, we will designate the carrier and take out a transport insurance policy.
2. The goods are to be packed as is required and sufficient for the intended shipment.
3. Shipment is executed at the contractor's risk.
4. Each consignment must be accompanied by a delivery note executed in duplicate stating our order number and article number.
5. Unless another place of performance ("Erfüllungsort") is agreed in the contract, delivery has to be made to the registered office of the ordering party. The risk passes upon hand-over of the consignment to us.

### IV. Measurements – weights – quality

1. In the case of deviations in the measurements, weight, quantity or quality, the regulations of § 377 HGB (German Commercial Code) apply. We will give notice of deviation within 10 calendar days from receipt of the delivery. If the goods are charged on the basis of their weight, the net weight is to be applied for calculation.

<sup>1</sup> Note of the translator:

The so-called „kaufmännische Bestätigungsschreiben“ confirms the preceding informal agreement for conclusion of a contract and bindingly stipulates the terms and conditions of such contract; if the contractor does not agree to such terms and conditions, he must reject them immediately; silence of the contractor is generally deemed approval of the contract and the conditions stipulated therein unless the conditions fixed in the confirmation letter deviate from the informal agreement so gravely that the issuer of the letter of confirmation cannot in good faith expect the contractor to agree to them.

2. Machines, plants and installations must satisfy the latest state-of-the-art standards valid at the time of acceptance and comply with all other statutory and regulatory requirements (VDE – German Electrical Engineering Association, CE etc.) and with the regulations of the responsible employers' liability insurance association ("Berufsgenossenschaft").

### V. Delivery periods – Delivery dates – Force majeure

1. The agreed delivery dates and periods are binding for the contractor. The goods are deemed delivered in time (i.e. on the agreed delivery date or within the agreed delivery period) if they timeously arrive at the consignee's address indicated by us.
2. If the contractor becomes aware that he will not be able to comply with the agreed delivery date or the agreed delivery period, the contractor will inform us without undue delay ("unverzüglich") stating the presumable duration of the delay as well as the reasons for the delay.
3. Where we have failed to provide necessary documents, information/ data, provisions and the like which we are obliged to provide under the contract, such failure will only prevent the contractor from being deemed in default ("Verzug") if he has reminded us in writing of providing the said items and has not received them within a reasonable period.
4. If the contractor is in default of delivery, we are entitled to claim the rights provided by law, in particular the right to withdraw from the contract and the right to claim compensation of damages. If we accept a delayed delivery without reservation, this must by no means be deemed to constitute a waiver of the compensation claims to which we are entitled on grounds of the delayed delivery or service provision.
5. If we are in default of acceptance or payment, the contractor's claim for compensation of damages is limited to 0.2 % of the agreed net price for each full week of delay, provided and to the extent that the delay is not based on a willful or grossly negligent breach of duty or, in the case of bodily injury, on a negligent breach of duty on the part of any of our legal representatives or vicarious agents or other persons engaged by us in the performance of our obligations ("Erfüllungsgehilfen").
6. Force majeure and industrial action release the contracting parties from their obligation to perform in accordance with the contract for the duration of the disturbance and to the extent that such disturbance impairs the party's ability to perform. The contracting parties are obliged to provide within reasonably acceptable limits all necessary information without undue delay ("unverzüglich") and adjust their obligations to the new situation according to the principles of good faith.
7. If the delivery is – with regard to economic aspects – no longer usable for us because of the delay caused by the force majeure event or the industrial action, we will be fully or partly released from our obligation to accept the ordered delivery.
8. We may withdraw from the contract, if the contractor files a petition in insolvency or insolvency proceedings are instituted against the contractor's assets or the institution of insolvency proceedings is refused for insufficiency of assets. We may also withdraw from the contract if individual steps are taken to levy execution against the contractor.

### VI. Invoicing – Terms of payment

1. All invoices have to be issued and presented to us in duplicate along with all relevant documents.
2. We can only process the invoice if it states our order number, the account assignment and the article number for each delivery item. Improper or incomplete invoices are only deemed received by us upon receipt in due corrected form.
3. Payment is made, at our choice, either by cheque or remittance or discountable bill of exchange. All costs incurred in this context are at our expense.
4. Terms of payment: Invoices are due and payable within 30 days from complete delivery/ service provision and receipt of invoice. If the invoice is paid within 14 days a 3% discount will be deducted from the invoice amount.
5. Works certificates, drawings, spare parts lists, operating instructions and other documentation included in the scope of the delivery are deemed integral parts of the delivery and have to be provided to us along with the invoice but by no means later than within 10 days from receipt of the invoice.
6. The term of payment only starts to run upon receipt of any and all documentation included in the scope of delivery. In the case of incomplete or missing documentation we may withhold payment in due proportion to the value concerned until proper presentation of the documentation.

### VII. Guarantee – Warranty – Product liability

1. All deliveries and services provided by the contractor must satisfy the latest state-of-the-art standards and comply with all applicable regulations, guidelines and directives. Any deviation from such standards and regulations requires our consent.
2. The contractor is obliged to use for the production of the products and services ordered by us environment-friendly products and manufacturing processes within the limits of his economic and technical possibilities.
3. The contractor is liable for that the delivered goods / services are free from defects impairing their value or usability and that they show the qualities warranted or guaranteed by the contractor ("zugesicherte/ garantierte Eigenschaften" in terms of German law) and that they are free of third-party rights. The contractor explicitly guarantees that the goods fully correspond to the specimen, samples, descriptions and specifications

provided by him. The contractor is liable for his delivery/ service and its faultless provision even if we have signed, approved, stamped or marked „noted“ or the like any plans, drawings, calculations or other execution documents submitted by the contractor.

4. We are obliged to inspect the goods for defects within a reasonable period of time: Notice of defect is deemed given in due time in terms of the obligation to inspect and give notice of defect according to § 377 et seq. HGB (German Commercial Code) if it is received by the contractor within a period of 10 calendar days from receipt of the delivery or, in the case of hidden defects, from detection.
5. Defects that have been complained about during the warranty period, including the complaint for non-compliance with any guaranteed features or performance figures and the complaint for lack of warranted qualities („zugesicherte Eigenschaften“), have to be remedied by the contractor without undue delay („unverzüglich“), at our choice either by subsequent improvement („Nachbesserung“) or substitute delivery („Ersatzlieferung“). Apart from that, we are entitled to assert any and all warranty claims provided by law without restrictions. If an attempt of the contractor to provide subsequent satisfaction („Nacherfüllung“) by subsequent improvement or substitute delivery has failed or if the contractor illegitimately refuses to provide subsequent satisfaction or if he fails to do so within the grace period granted by us, we are entitled, without a further warning or request, to remedy the defect ourselves or have it remedied by a third party engaged by us and to claim reimbursement of the expenses incurred in this context as well as an adequate advance payment on account of such expenses. This is without prejudice to our statutory right to withdraw from the contract and claim compensation of any further damage. The right to remedy the defect ourselves does not apply where the contractor can legitimately refuse to provide subsequent satisfaction according to the statutory regulations.
6. Minor defects can be remedied by us at the contractor's expense without prior consultation with the contractor. The same applies if immediate defect remedy is required to prevent substantial imminent consequential damage.
7. All costs incurred in the context of warranty services for subsequent improvement, replacement or substitutions are at the contractor's expense. This applies in particular to the cost of materials, personnel, transport, travelling and all other costs and also in the case that the delivered item has been transferred to a place other than the original consignee's address.
8. We explicitly reserve the right to assert claims for compensation of damages. The also applies to claims for compensation of damages on grounds of non-performance („Schadenersatz wegen Nichterfüllung“).
9. The warranty period is 2 years and starts to run upon delivery of the goods/ services at the agreed place of receipt or use.
10. If formal acceptance by way of inspection and approval by us has been agreed for certain machines or other apparatus, the warranty period runs from the day of such formal acceptance. If formal acceptance is delayed with no fault on the part of the contractor, the warranty period will be not more than two years from the time when the contract item has been made available for formal acceptance. The place of formal acceptance will be chosen by us.
11. If we deliver the contract item to our customer as an individual part in the context of an overall project, formal acceptance is only deemed rendered after our customer has inspected and approved the overall project on the customer's premises. If, in this case, formal acceptance is delayed with no fault on the part of the contractor, the warranty period will be not more than 2 years from the time when the contract item has been made available for formal acceptance by the customer in the context of the overall project, regardless of the time of actual formal acceptance.
12. The warranty period starts to run anew for improved or substituted parts.
13. Each contract item has to be marked by the contractor so that it can enduringly be identified as a product of the contractor.
14. The contractor has to conduct a quality assurance that is suitable in kind and scope and in accordance with the latest know-how standards and has to evidence compliance with such requirements in the case of a product liability incident.
15. If we are held liable for breach of official safety regulations issued by the authorities or on the basis of domestic or foreign product liability regulations on grounds of a defect of our product, we are entitled to claim compensation of damages from the contractor if the defectiveness of our product was due to, at least among other things, a defect of the product delivered by the contractor.
16. If and to the extent that the contractor is responsible for a damage caused by the product, the contractor is obliged to indemnify and hold us harmless from any and all third-party claims for compensation of damages to the extent that the cause for such damage originates from the sphere under his control and organization and the contractor is himself liable vis-à-vis third parties.
17. The contractor is obliged to take out and maintain a product liability insurance policy with a flat-rate coverage of at least € 3 million for each single case of personal injury/ damage to property. This is without prejudice to our right to claim compensation of damages going beyond the insured sum. The contractor has to evidence such insurance upon request.

#### **VIII. Industrial property rights**

1. The contractor warrants that no infringement of third-party rights occurs in connection with his delivery. Furthermore, in the case of an infringement of industrial property rights attributable to the contractor, the latter is obliged

to indemnify and hold us harmless upon first request from any and all claims arising from such infringement. Within the limits of his liability, the contractor is also obliged to reimburse any and all expenses incurred in the context of a recall.

2. In the case of an infringement of third-party industrial property rights, the contractor is obliged to procure an appropriate license. If this cannot be implemented within a reasonable period of time, the contractor is obliged to provide an equivalent substitute for the respective product at his expense.

#### **IX. Non-disclosure**

1. The contractor undertakes to keep all illustrations, drawings, calculations and other documents and information made available to him strictly secret. They may only be disclosed to third parties with our explicit written consent. Such non-disclosure obligation remains in force even after the execution or failure of this contract; it ceases to be effective as soon as and to the extent that the manufacturing know-how contained in the said illustrations, drawings, calculations and other documents has become generally known. Subcontractors have to be committed to that effect, too.
2. The conclusion of contract has to be treated confidentially. Subcontractors have to be committed to that effect, too.
3. The contractor warrants and is liable for that no third-party rights are infringed in connection with his delivery.
4. If we are held liable for an infringement of third-party rights, the contractor is obliged to indemnify and hold us harmless from such claims.
5. The obligation of the contractor to indemnify and hold us harmless pertains to all expenses necessarily incurred by us on grounds of or in connection with the assertion of third-party claims.

#### **X. Place of jurisdiction – Governing law**

1. The court having local, functional and subject matter jurisdiction over the place of the contractor's registered office has jurisdiction over all disputes arising between the parties. However, we reserve the right to assert our claims before any other competent court.
2. These General Conditions of Purchase and the legal relations between the contractor and us are governed by the law of the Federal Republic of Germany with the exception of all international and supranational regulations, in particular UN Sales Law.

#### **XI. Severability – Contract language**

1. If any individual provision of these Conditions should be or become invalid/ impracticable, the validity of the remaining provisions hereof remains unimpaired. The contracting parties are obliged to replace such invalid/ impracticable provision by a provision that corresponds as closely as possible to the economic purpose of the invalid/ impracticable provision, and that with effect as of the time of invalidity/ impracticability and in consideration of the mutual interests of the parties, unless an appropriate statutory regulation revives which was originally superseded by the invalid provision. The same applies in the case of an omission.
2. The contract language is German. If the contracting parties also use another language, the German version will prevail.

#### **XII. Code of conduct**

1. The SUPPLIER, on his own and for his subsidiary companies, employees, sub-suppliers, agents, collaborators and assistants, declares to accept the Code of Conduct with the Instruction No. 516/2004 of 01/06/2004 concerning the Organization, Management and Control Model adopted by TENOVA, published on its website:

<http://www.tenova.com/code-of-conduct.asp?im=634>

2. Either Party shall fulfill any requests for information, data or news from the Compliance Committee of the other Party. The SUPPLIER shall attest the truthfulness and completeness of the documentation produced and the information supplied to TENOVA for the execution of the ORDER in case it is necessary due to legal obligations or as consequence of audit by public authority.
3. If the SUPPLIER breaches the provisions included in this Article, TENOVA shall have the right to terminate the PURCHASE ORDER.

As amended in 2016/10/25