

General Terms and Conditions of Purchasing

I. Scope of validity, deviating terms and conditions of the supplier

1. For all purchase orders of Otto Bihler Maschinenfabrik GmbH & Co. KG (purchaser) and the supplier these General Terms and Conditions of Purchasing ("Terms and Conditions of Purchasing") are valid
2. These Terms and Conditions of Purchasing apply exclusively. Conflicting or differing terms of business of the supplier will not be accepted except the purchaser has explicitly agreed to these terms in individual cases.
3. During current business relations, the present Conditions of Purchasing shall also apply to all future contracts for purchase orders between the purchaser and the supplier even if in an individual case the present Conditions of Purchasing have not been explicitly referred to.

II. Written / text form, purchase order, conclusion of the contract, documents, modifications, extensions

1. For the content of the contract between the purchaser and the supplier only the written purchase order – also by email or fax – is decisive. Purchase orders are only binding if they are confirmed in writing by the supplier within 14 days from receipt mentioning a binding delivery date, unless something else was agreed in an individual case. Variations, changes or amendments of the purchase order by the order confirmation will become part of the contract only if they are confirmed in writing by the purchaser.
2. Forecast delivery schedules within a purchase planning and delivery planning will become binding if the supplier does not disagree within two work days from receipt of the aforementioned.
3. The purchaser owns the property right and copyright of the documents – also the digital version - belonging to the purchase order. The documents the purchaser gives to the supplier may not be duplicated or made accessible to a third party without the explicit written consent of the purchaser. The purchaser may not pass on documents designated as confidential from the supplier to a third party without his consent.

III. Prices, change in prices, payment terms

1. The prices stated in the purchase order are fixed prices until the date of shipment. Increases in prices become only valid if they are confirmed in writing by the purchaser.
2. Unless otherwise agreed the prices are understood free purchaser's address, that means including packing, customs duties, insurance and assembly plus the valid value added tax.
3. Unless otherwise agreed payments are effected within 14 days with a discount of 3 % or within 30 days with a discount of 2% or within 90 days without discount. The payment period starts when the delivery and/or the service has been fully carried out and a correctly issued invoice was received by the purchaser. A payment discount remains allowed when offsetting or holding back payment because of a defect of the delivery, if the latter is the case the payment period begins only after complete rectification of the defect or replacement delivery.
4. Without prior written consent the supplier is not entitled to completely or partly surrender his claims against the purchaser or to dispose of them in any way.

IV. Delivery time, delivery dates/periods, acceptance, delay in delivery, contractual penalty

1. The delivery time and delivery period in the purchase order is binding. For the timeliness the following is decisive
 - for delivery the receipt at the purchaser's place
 - for other services and if a delivery takes place with installation and assembly the acceptance
2. If for the supplier a delay in delivery or services is foreseeable before the delivery date or expiry of the delivery deadline, he has to immediately inform the purchaser about this and to request his decision.
3. If there is a delay in delivery the purchaser has the right to claim an overall compensation for damages from the supplier. This compensation for damages amounts to 0,5 % of the net order value of the delivery behind schedule for each complete week of the delay in delivery, however, not more than 5 % of the net total order value. The enforcement of a further damage remains reserved despite the enforcement of the overall compensation for damages. Here an overall compensation for damages potentially paid by the supplier has to be credited to a further claim for compensation for damages which is due to the delay in delivery of the supplier
4. The unconditional acceptance of a delayed delivery does not represent a renunciation of the purchaser's rights concerning the delivery behind schedule.
5. Apart from that the statutory provisions apply

V. Place of performance, transfer of risk, receipt

1. The place of performance for deliveries, services and payments is the domicile of the purchaser unless otherwise agreed
2. Upon delivery the risk is transferred to the purchaser with the receipt of the goods, upon delivery with installation and assembly and services, with the acceptance.

VI. Obligation of investigation and obligation to give notice of defects, liability for defects, supplementary performance, costs for supplementary performance

The obligation of investigation and obligation to give notice of defects of the purchaser and the liability for defects of the supplier is according to the law, modified by the following provisions

1. The acceptance of the delivery is carried out under reserve of an inspection if the delivery is free of defects, especially also if the delivery is correct and complete as far as and as soon as it is possible in the proper course of business. Here it is enough in case of mass-produced goods (more than 10 equal single parts) for the purchaser for complying to his obligation of investigation and obligation to give notice of defects if he inspects the goods randomly. In this respect the supplier renounces to the objection of the delayed notice of defects. Payments of the purchaser do not represent an acknowledgement that the goods are free from defects. For deliveries with installation and assembly an acceptance at the purchaser's site has to be carried out.

2. The right to choose the kind of supplementary performance is generally a right of the purchaser. The supplier has the right to decline the kind of supplementary performance chosen by the purchaser when it is only possible with disproportionate costs. In case of a replacement delivery or a new manufacture the purchaser has the right to return the originally delivered products to the supplier at the suppliers' risk and cost.
3. In case the supplier does not start with removing the defect immediately after request of the purchaser to remove the defect the purchaser has the right, in urgent cases, especially for repelling substantial dangers or avoidance of larger damages, to carry out the removal on his own or to have it carried out by a third party on the supplier's costs.
4. If the defect is a defect of title the supplier is responsible for, the purchaser will be released from the supplier also from possibly existing claims of third parties.
5. Moreover the supplier has to reimburse all costs which arose to the purchaser in connection with the defective delivery of the subject of the contract (transport costs, tolls, assembly and disassembly costs, material costs as well as other costs arising in connection with the removal of defects).
6. The claims for defects are limited to 24 months. The period of time starts for deliveries respectively services which are meant for resale by the purchaser with transfer of the subject to the customer of the purchaser. However, it ends 30 months after delivery to the purchaser or the third party named by the purchaser at the latest. If a formal acceptance is agreed upon, the period of time starts on the day of acceptance.
7. With the supplier's receipt of the written notice of defects the limitation of warranty claims is suspended. For replacement deliveries and rectification of defects the warranty period for replaced and repaired parts starts again. This does not apply if the supplier was explicitly or for the purchaser recognizable not responsible for this but has only undertaken the replacement delivery / rectification of defects because of goodwill or similar reasons.

VII. Liability, product liability and insurance

1. The supplier is responsible for all claims of third parties regarding personal damage and material damage which are due to a defective product delivered by him. In these cases the supplier is also obligated to release the purchaser of such claims of third parties. In cases of fault-based liability this does only apply if the supplier is responsible for it. If the supplier is responsible for the cause of damage the supplier has to prove that he is not responsible for this.
2. Referring to the before mentioned the supplier bears all costs and expenses, including the costs of a possible prosecution or recall. In this case the purchaser will inform the supplier of the volume and content of the recall and give him the opportunity of a contribution, except it is not possible to inform the supplier or a contribution of the supplier is not possible due to special urgency.
3. The supplier undertakes to maintain a product liability insurance and a recall costs insurance with an adequate sum insured. This has to be proven to the purchaser.
4. The supplier reimburses the purchaser furthermore for all damages respectively releases the purchaser from all directly or indirectly arising claims, including such as death, bodily harm, health hazard, property or other rights which were caused by the delivery of defective subjects of the contract or infringements of other contractual obligations. In case of a statutory fault liability this does not apply if the supplier is not responsible.
5. The statutory liability will apart from that remain unaffected by this

VIII. Right of withdrawal and right of termination

1. The purchaser is regardless of the rights of withdrawal provided for by statute entitled to terminate the contract respectively withdraw from the contract immediately if the supplier stops supplying to his customers, a substantial deterioration pecuniary circumstances of the supplier occurs or is in danger of occurring which endangers the delivery obligations towards the purchaser or an inability to pay/over-indebtedness of the purchaser occurs. The same applies if an application for opening an insolvency proceeding for the property of the supplier is filed.
2. If according to paragraph 1 the contractual right of termination/right of withdrawal has been made use of the supplier has to refund the damages occurred by this, except he is not responsible for the reasons which led to the termination/withdrawal.
3. Further legal claims are not limited by the above provisions

IX. Rights of use, industrial property rights / copyrights, know-how

1. The supplier grants the purchaser the non-exclusive, transferable, worldwide right unlimited in time to use the deliveries and services, to integrate them in other products and to distribute them worldwide and to use or let use the software and the corresponding documentation in connection with the installation, the commissioning, the test and the operation.
2. The supplier guarantees that the delivered item is free of industrial property rights or copyrights of third parties. Every contractual partner will inform the other partner immediately in writing if claims due to the infringement of such rights have been enforced against him. The supplier undertakes to defend the purchaser and keep him indemnified regarding all claims of third parties concerning infringements of industrial property rights arising from the delivery or service. Furthermore he undertakes to compensate all costs and expenses. This does not apply if the supplier is not responsible for the infringement of industrial property rights of third parties.
3. Apart from that paragraphs VI and VII are valid
4. Know-how and industrial property rights of the purchaser which were developed before establishing the cooperation, shall remain the sole property of the purchaser.
5. Know-how developed during cooperation between supplier and purchaser shall remain joint property. Both parties can file an application for industrial property rights pertaining to this know-how.

X. Non-disclosure

1. The supplier and purchaser undertake to treat all knowledge of confidential information and trade secrets of the other party obtained during the business relationship, which includes also business relationships before the contract was concluded and performed, confidential for an unlimited period of time, especially also after ending the cooperation and to take all adequate precautions to preserve their confidentiality and not to disclose them to any third party. These include in particular technical information, layouts, data, ideas, software, trade secrets, documentations, source codes as well as other information indicated as being confidential or being recognizable as such.
2. The obligation of secrecy does not apply to confidential information, (i) which at the moment of disclosure was already evident or will become publicly known afterwards, without non-observance of the above mentioned provisions being concurrently causative for it, (ii) which is disclosed by a party expressly on a non-confidential basis, (iii) which before the disclosure was already in legitimate possession of the other party, or (iv) which is disclosed to the latter afterwards by a third party without breaching confidentiality. The burden of proof for the presence of one of the above mentioned exceptions is assumed by the party referring to it.

XI Transfer of orders to third parties, supply of material, provision of spare parts

1. The transfer of orders to third parties is not permitted without the written consent of the purchaser and entitles the purchaser to withdraw from the contract completely or partially and to claim compensation for damages.
2. Material supplies remain the property of the purchaser. They have to be stored by the supplier free of charge and separately, they have to be marked and protected against unauthorized inspection and utilization. Processing and alteration of the material is carried out on behalf of the purchaser. The purchaser becomes immediately the proprietor of the new or altered products.
3. Facilities like tools, forms, samples, models, drawings etc. supplied by the purchaser may as well as products produced afterwards not be passed on to a third party or used for other purposes than for contractual purposes without the prior written consent of the purchaser. They have to be protected against unauthorized inspection and utilization. Reserving further rights the purchaser can request their release if the supplier infringes these obligations.
4. The supplier is obligated to hold available spare parts for an adequate period of time which corresponds to the normal product life of the supplied product, at least however for five years from delivery of the last product.

XII. Place of jurisdiction, applicable law, partial invalidity

1. For all disputes arising from the contractual relationship the suit shall be filed at the court having jurisdiction for the registered office of the headquarters of the purchaser. The purchaser shall also be entitled to file a suit at the court having jurisdiction for the head office of the supplier.
2. The law of the Federal Republic of Germany shall apply exclusively. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.
3. In the event of provisions of these Conditions of Purchasing or parts of it be or become completely or partly ineffective, the validity of the present Conditions of Purchasing remain unaffected by this. Should the ineffective provisions contain an effective and adequate part the latter shall persist. The parties will try to find a substitute provision which best compares to the economic result of the omitted provision.