

General Purchase Terms And Conditions Of Ferro Umformtechnik GmbH & Co. KG, 48703 Stadtlohn, David-Roentgen-Straße 15-25

1. General

1.1.

Our purchase terms and conditions apply exclusively; we do not accept the supplier's contradictory or general terms and conditions that contradict or deviate from our general terms and conditions, unless we expressly accepted their applicability in writing. Our purchase terms and conditions also apply when we accept or pay for the supplier's products and services (in the following: object of the contract) in the knowledge of the supplier's terms and conditions contradicting or deviating from our purchase terms and conditions.

1.2.

Our purchase terms and conditions also apply to all future business with the supplier.

1.3.

The site delivery regulations that are on hand and known to the supplier are part of our purchase terms and conditions.

2. Contract conclusion and contract amendments

2.1.

Purchase orders, contract conclusions and call-offs as well as their amendments and supplements require the written form. Purchase orders, contract conclusions and call-offs as well as their amendments and supplements can also take place by data transfer or fax.

2.2.

Verbal agreements before or at the time of the conclusion of the contract must be confirmed in writing in order to become effective. Item 2.1. sentence 2 is not affected.

2.3.

Verbal agreements made after the conclusion of the contract, in particular subsequent amendments and supplements of our purchase terms and conditions – including this written form clause – as well as supplementary agreements of any kind also require the written confirmation by the purchase department in order to become effective.

2.4.

Unless expressly agreed otherwise, cost estimates are binding and not reimbursable.

2.5.

If the supplier does not accept the purchase order within two weeks of receipt, we will be entitled to withdraw the purchase order. Call-offs will become binding if the supplier does not contradict within five working days after receipt.

3. Delivery

3.1.

Deviations from our contract conclusions and purchase orders are only permitted following our prior written approval.

3.2.

Agreed dates and terms are binding. Adherence to the delivery date or the delivery lead time is decided by the receipt of the goods at our site. Unless delivery "free to works" is agreed (DDU or DDP in accordance with Incoterms 2000/2002), the supplier shall provide the goods in good time, taking into account the time for loading and shipment to be agreed with the freight carrier.

3.3.

If agreed deadlines are not met, the legal regulations apply. If the supplier foresees difficulties with regard to production, material supply, meeting the delivery date or similar circumstances that may prevent the supplier from a timely delivery or a delivery in the agreed quality, the supplier must immediately notify our department that placed the order.

3.4.

The unconditional acceptance of the late delivery or service does not include a waiver of the compensation claims we are entitled to due to the late delivery or service provision; this also applies in the case of the full payment of the reimbursement owed by us for the delivery or service provision in question.

3.5.

As a matter of principal, partial deliveries are not permitted, unless we expressly approved them or we can be reasonably expected to accept them.

3.6.

Subject to another form of proof, the values for piece counts, weights and measures determined by us during goods inward inspection are decisive.

3.7.

The delivery scope for sheet metal deliveries, in as far as ordered by us, comprises acceptance test certificates. These must be on hand to us at the latest on the day of the delivery.

3.8.

The acceptance test certificate is part of the delivery scope. In the absence of the same, the invoice will be suspended until receipt.

4. Force majeure

4.1.

Force majeure, industrial action, inadvertent business disruptions, unrest, government measures and other unavoidable events entitle us – notwithstanding our other rights – to withdraw from the contract in part or in full, in as far as these are not of insignificant duration and result in a significant reduction of our demand.

5. Invoice

5.1.

The specifications in our purchase orders and call-offs apply. The invoice must be submitted to the printed address in each case and must state the invoice number, all VAT and other identifiers such as:

- Purchase order number
- Cost centre and/or cost unit number
- Assured properties / agreed material attributes
- Quantities (in pieces, kg, litres, etc.)

The invoice must not be enclosed with consignments.

5.2.

In the absence of one of these details the invoice can not be processed and will be returned to the supplier. The start of the payment target is deemed to be the date of the receipt of the invoices, including all necessary details.

6. Pricing and transfer of risk

6.1.

If no special agreement has been made, the prices are free to works, duty paid (DDP in accordance with Incoterms 2000/2002), including packaging and excluding VAT.

6.2.

The supplier shall bear the material risk until the acceptance of the goods by us and our agents at the location to which the goods are to be delivered pursuant to the purchase order.

7. Payments

7.1.

In as far as no special agreement has been made, the invoice shall be settled either within 21 days, with a cash discount of 3%, or within 60 days, without deduction, from the settlement claim becoming due and the receipt of both the invoice and the goods or service provision. Payments are subject to invoice audit. The invoice settlement shall take place on the 5th or the 20th day of the month within the payment periods stated above.

7.2.

Should the supplier be legally entitled to claim damages from us due to late payment, we are entitled to prove that the supplier has incurred a lesser damage than specified in § 288 section 1 or section 2 BGB (German civil code).

8. Notification of defects and recourse

8.1.

Acceptance takes place subject to inspection for faultlessness, in particular for correctness, completeness and fitness for purpose. We are entitled to inspect the object of the contract in as far as and as soon as this is feasible in the proper course of business; any defects discovered will be reported by us immediately after discovery. The supplier waives the objection of a late notice of defects to this extent.

8.2.

The legal regulations regarding material defects and defects in title apply unless otherwise specified in the following.

8.3.

We shall always be entitled to choose the type of subsequent performance. The supplier shall be entitled to reject the type of subsequent performance chosen by us in accordance with the preconditions of § 439 section 2 BGB (German civil code).

8.4.

In the event of a failed subsequent performance by the supplier we shall be released from any further obligation of notification of defects. We shall be entitled to perform this ourselves or have this performed by a third party at the supplier's expense.

8.5.

Material defect claims are subject to a period of limitation of two years unless the material object has been used for a building in accordance with its usual use and has caused the building's defectiveness. The period of limitation for material defect claims begins with the delivery of the object of the contract (transfer of risk).

8.6.

In the case of defects of title the supplier shall additionally hold us free of any existing claims of third parties. Defects of title are subject to a period of limitation of 10 years.

8.7.

For parts of the delivery overhauled or repaired during the period of limitation, the period of limitation begins anew at the point in time at which the supplier has completely fulfilled our claims for subsequent performance.

8.8.

If we incur costs resulting from the deficient delivery of the object of the contract, in particular transport, travel, labour or material costs or costs of an entry check that exceeds the usual scope, the supplier shall bear these costs.

If we withdraw from the contract within the scope of the supplier's liability for defects, the supplier shall be obliged to compensate us for the total contract costs.

8.9.

In the event of our taking back products manufactured and/or sold by us because of the defectiveness of the object of the contract supplied by the supplier or if the purchase price payable to us was reduced because of this or if any other claims are made against us because of this, we reserve the right of recourse against the supplier, in which case it shall not be necessary to set an otherwise required period for our defect-related rights.

8.10.

We shall be entitled to claim compensation for our expenses which we had to bear in relation to our customer because same is entitled to claim compensation from us for the expenses necessitated for the purpose of subsequent performance, in particular transport, travel, labour and material costs.

8.11.

Notwithstanding the provision of item 8.5, the period of limitation in the cases of items 8.9. and 8.10. is exceeded, at the most, two months after the point in time at which we have fulfilled the claims made by our customer against us, however, no later than five years after delivery by the supplier.

8.12.

If a material defect becomes evident within 6 months after the transfer of risk, it will be assumed that the defect was already present at the time of the transfer of risk, unless this assumption is incompatible with the nature of the material object or the defect.

9. Product liability and recall

9.1.

In the event of product liability claims made against us, the supplier undertakes to hold us free of such claims if and in as far as the damage was caused by a fault of the object of the contract supplied by the supplier. However, in cases of culpability-dependent liability this shall only apply if the supplier is culpable. If the cause of the damage falls within the supplier's responsibility, the burden of proof is on the supplier to that extent.

9.2.

In these cases, the supplier will bear the costs and expenses, including the costs of any legal or recall action. In all other cases, the legal regulations shall apply.

10. Documents and nondisclosure

10.1.

All business or technical information (including attributes that may be obtained from any objects, documents or software provided and other insights or experiences) made accessible by us must be kept secret from third parties and must only be made available to those persons inside the supplier's own operation who, by necessity, need to be involved for the purpose of the delivery and who are also under obligation of nondisclosure; this business and technical information exclusively remains our property. With the exception of deliveries to us, such information is not permitted to be reproduced or used commercially without our prior written approval. Any information originating from us (if applicable, including any copies or records made) and objects provided on a loan basis are to be returned to us or destroyed immediately at our request: we reserve all rights in such information, including copyrights and the right to register commercial property rights such as patents, utility models, etc. In as far as these were made accessible to us by third parties; this reservation of rights also applies to the benefit of these third parties.

10.2.

Products that are manufactured according to documents designed by us, such as drawings, models or similar or according to our confidential specifications or with our tools or reproduced tools, are neither permitted to be used by the suppliers themselves nor to be delivered or offered by third parties. The same applies correspondingly for our print orders.

12. Place of fulfilment

The place of fulfilment shall be the location to which the goods are to be delivered pursuant to the order.

13. General provisions

13.1.

Should a provision of these terms and conditions and the agreements entered into be or become void, this shall not affect the validity of the remaining terms and conditions. The contract partners undertake to replace the void provision with a regulation that will match it as closely as possible with regard to its economic success.

13.2.

Place of jurisdiction

For all legal disputes arising directly or indirectly from contractual relationships based on these purchase terms and conditions, the place of fulfilment shall be the place of jurisdiction. Furthermore, we are entitled to take legal action against the supplier at the court at the supplier's place of residence or headquarters or at the court at the place of fulfilment at our discretion.

13.3.

The contractual relationships are exclusively governed by German law under exclusion of the conflicts of law provisions and the convention of the United Nations on the international sale of goods (CISG).