

General Conditions of Purchase

1 General

- 1.1 These "General Terms and Conditions of Purchase" constitute an integral part of the contract for work and services or the purchase contract or order.
- 1.2 In this document, the contractor (contract for work) and the seller (contract of sale) are referred to as the "supplier" and the orderer (contract for work) and the buyer (contract of sale) are referred to as the "orderer". The work to be produced or the object of purchase shall be referred to as "delivery".
- 1.3 The general terms and conditions of purchase shall apply unless written agreements to the contrary are made in individual cases. General terms and conditions (delivery, sales or assembly conditions, etc.) of the supplier shall only apply if they are expressly recognised by Friedli in writing in the order or contract.
- 1.4 In the event of any inconsistency between these General Terms and Conditions of Purchase and the Contract, the provision contained in the Contract shall prevail.
- 1.5 In addition to the General Terms and Conditions of Purchase and contractual provisions, the provisions of the Swiss Code of Obligations shall apply.

2 Delivery in general

- 2.1 By submitting the offer, the supplier acknowledges that he is aware of all facts and circumstances relevant to the calculation, design and execution of the delivery including accessories.
- 2.2 The delivery shall be carried out according to proven design principles, taking into account the latest state of science and technology, using the most suitable material, in such a way that it fulfils the purpose it is intended to serve in every respect and ensures maximum operational safety. The construction shall be designed in such a way that revisions and repairs are kept to a minimum and can be carried out within the shortest possible time and with the least possible effort.
- 2.3 Furthermore, the delivery must comply in every respect with the relevant statutory and official provisions as well as the relevant technical regulations.

3 Drawings, calculations and instructions

- 3.1 In good time before fabrication or provision of the delivery, the Supplier shall submit to the Purchaser all important technical documents such as drawings with main dimensions, material lists, foundation plans, diagrams, test specifications, etc. in binding form for review and comment.
- 3.2 The supplier shall also provide all information required by third parties involved in the project in good time and in binding written form.
- 3.3 If, as a result of subsequent changes in the disposition or the mass of the objects delivered by the Supplier, modification work becomes necessary on the structural part of the Purchaser's plant or on third party supplies, all costs incurred thereby shall be borne by the Supplier, provided that the modifications were made by the Supplier without the Purchaser's approval.
- 3.4 The submission and approval of the documents by the Purchaser shall not release the Supplier from the responsibility for compliance with the contractual obligations.
- 3.5 The Supplier shall provide the Purchaser with detailed instructions for the assembly, disassembly, monitoring as well as the operation and maintenance of the entire delivery (operating instructions) at the latest upon delivery.
No later than four weeks after provisional acceptance (in accordance with Art. 8), the Supplier shall also hand over to the Purchaser 2 complete and cleaned sets each of all drawings, diagrams and other documents (of which 1 reproducible set in paper form and 1 digital data set) which are necessary for a clear understanding of the functioning, operation and maintenance of the Supply and for ordering spare parts.
- 3.6 The standard color scheme for painted parts is as follows: Motors RAL 3001 (signal red), remaining parts RAL 9001 (cream white). Supplier-specific color concepts shall be accepted only after approval by Friedli. Incorrect deliveries will be repainted at the supplier's expense.

4 Checks, tests, deadlines

- 4.1 The Purchaser and its representatives shall have free access to the Supplier's workshops and those of its subcontractors by prior appointment and shall be provided with all requested information on the status of the work, the quality of the materials used, etc.
- 4.2 Neither the exercise of the aforementioned controls by the Purchaser nor the performance of acceptance tests shall release the Supplier from full responsibility for compliance with the guarantees and obligations assumed under the contract.
- 4.3 The Supplier shall submit an indicative work programme in good time before the start of manufacture and shall keep the Purchaser regularly informed of the progress of the work. Any impending delays in delivery shall be notified to the Purchaser without delay and with detailed reasons. At the same time, the Purchaser shall be informed of the measures the Supplier intends to take in order to nevertheless ensure timely commissioning.
- 4.4 If the Supplier is hindered in the fulfilment of its obligations by extraordinary, unforeseeable circumstances for which it is not responsible in such a serious manner that it is not possible for it to comply with the work or schedule in due time despite all reasonable efforts and measures, it shall notify the Purchaser thereof in writing without delay and provide evidence thereof. In the event of force majeure, the Supplier shall be entitled to a reasonable extension of the contractually agreed deadlines. The Purchaser shall decide on the duration of the extension, which shall generally correspond to the duration of the delay. Strikes, lock-outs and import restrictions shall be deemed to be impediments within the meaning of these provisions if they meet the conditions set out in the first paragraph. If the supplier fails to provide notification and proof, he cannot demand that the impeding circumstances be taken into account subsequently.

5 Packaging, storage, shipping, transport

- 5.1 The purchaser must be notified in writing that the goods are ready for dispatch. If, at the request of the Purchaser, the dispatch of the material has to be postponed beyond the agreed delivery date, the Supplier shall store it in its works or otherwise at a suitable place, free of charge for 3 months.
- 5.2 The DDP arrival clause of INCOTERMS 2010 shall apply. The transfer of benefit and risk as well as of ownership shall in any case only take place upon provisional acceptance in accordance with Art. 8 No. 1. The Purchaser reserves the right to carry out the transport with its own vehicles.
- 5.3 The costs of storage of the delivery at the place of destination until the assembly has been carried out shall be borne by the Purchaser. Storage shall be under the responsibility of the supplier and may be supervised by him. The space for storage shall be provided by the Purchaser free of charge.

6 Legal consequences in the event of late delivery

- 6.1 If the contractually agreed or extended delivery period (Art. 4 No. 4) at the named place of destination or the final installation date is not met by the supplier, the supplier shall be obliged to notify the customer. The customer shall pay a contractual penalty within the meaning of Art. 160 of the Swiss Code of Obligations. This amounts to 1% of the delivery price for each full week of delay. From the fourth week onwards, this rate is doubled. The total deduction due to delay in delivery is limited to a maximum of 10% of the delivery price. The delivery period shall be deemed to have been complied with if notification of the availability of the delivery at the named place of destination in accordance with Art. 5 Clause 2 or notification of the completion of the assembly is received by the customer within the agreed period.
- 6.2 The contractual penalty shall be deducted from the payment to be made by the customer or from the last payment instalment to be made by him. Its payment or offsetting does not release the supplier from the fulfilment of the other contractual obligations (Art. 160 paragraph 2 CO).
- 6.3 The Purchaser shall be entitled to set the Supplier a reasonable deadline for subsequent performance. If the supplier still fails to perform within this period, the customer may waive the subsequent performance and either claim compensation for the damage resulting from the non-performance or withdraw from the contract and claim compensation for the damage resulting from the non-performance of the contract. Art. 108 and 366 OR remain reserved. In addition, the buyer shall have a cumulative claim to payment of the contractual penalty pursuant to section 1.

7 Assembly, commissioning and trial operation

- 7.1 Installation, commissioning and trial operation are included in the contract price if expressly stated in the order or contract.
- 7.2 If the contract provides for separately chargeable work, it shall be charged at the assembly rates valid at the time of conclusion of the contract. Directed work shall be invoiced on a monthly basis on the basis of hourly reports as notified by the customer.
- 7.3 The supplier shall insure all employees, workers and unskilled workers employed and paid by him and working during assembly, commissioning and trial operation against accidents at his own expense.

8 Provisional acceptance, guarantee period, definitive acceptance

- 8.1 After completion of the assembly, the delivery shall be subjected to a joint inspection by the Supplier and the Purchaser and a trial run shall be carried out to prove its functional capability. If the inspection and the trial run are successful, a record of the result of these tests shall be drawn up and signed by both parties. The provisional acceptance of the delivery takes place with the signing of the protocol. If the provisional acceptance is delayed through the fault of the Purchaser, it shall be carried out after notification of the Purchaser's readiness, but in any case no later than six months after notification of the Supplier's readiness.
- 8.2 Compliance with the official regulations must be demonstrated at the latest before the provisional acceptance.
- 8.3 The warranty period shall commence on the date of provisional acceptance; at the same time the delivery shall become the property of the Purchaser.
- 8.4 Unless otherwise agreed, the warranty period shall be 1 year. After the expiry of this period, the final acceptance shall take place, provided that the operational reliability of the delivery as a whole has been proven. A joint record of the final acceptance shall be drawn up and signed by both parties. The approval of the delivery associated with the final acceptance shall not apply to those defects which were notified during the warranty period and have not yet been remedied by the time of the final acceptance, as well as to parts which only become apparent as defective at the time of the final acceptance. If, through the fault of the purchaser, the commissioning and thereby provisional acceptance, the warranty period shall be a maximum of 3 years from notification of readiness for dispatch.

8.5 If defects have to be remedied or replacement deliveries have to be made, the guarantee period for the parts affected by this measure shall start anew on the day of the provisional acceptance to be carried out again. In the case of major work, modifications and spare parts deliveries which are of fundamental importance for the function of the delivery, a new guarantee period shall be granted for the entire delivery. However, the new warranty period shall in any case last no longer than five years from the first provisional acceptance of the delivery or part of the delivery.

9 Guarantees

9.1 The supplier guarantees the flawless design and execution as well as full operational capability of the entire delivery. During the warranty period, the supplier shall repair as quickly as possible at its own expense or replace free of charge with new parts, if necessary of a different, suitable design, all parts and equipment which are attributable to faults in the design, material, execution or assembly of its delivery or which do not meet the contractual requirements in any other way.

9.2 Indirect advantages resulting for the customer from the subsequent rectification of defects shall not be taken into account. Excluded from the guarantee are normal wear and tear on wear parts and damage caused by inadequate supervision or operating errors on the part of the factory personnel (despite correct and clear instruction documents).

10 Legal consequences in the event of non-compliance with the guarantees

10.1 If the delivery suffers from such significant defects or otherwise deviates from the contract to such an extent that it is unusable for the customer or that he cannot be expected to accept it provisionally or definitively, he may refuse it, withdraw from the contract and claim damages.

10.2 If the defects or the deviations from the contract are less significant, the customer shall grant the supplier a reasonable period of time within which the supplier must make the improvements necessary to comply with the guarantees. If defects are not remedied or are not remedied successfully within this period, the customer shall be entitled to carry out the warranty work himself or to have it carried out by a third party at the supplier's expense. If, instead, the Purchaser waives rectification of the defects or if these could only be partially rectified, so that a reduced value of the work remains, the Purchaser may make a corresponding price deduction.

11 Carrying of risk, insurance, liability for damages

11.1 The supplier shall bear the full risk for the entire delivery until provisional acceptance.

11.2 The insurance of the usual transport and storage risks as well as the assembly risks up to the provisional acceptance shall be effected by the supplier, provided that the delivery includes assembly and commissioning. Upon request, the delivery shall be insured by the Purchaser at the Supplier's expense.

11.3 The supplier shall be liable, excluding consequential damages such as power failure, loss of production, loss of profit as well as other indirect damages, for all damages caused to the purchaser by the delivery, the supplier or its personnel. Liability for property damage and financial loss is limited to EUR 5 million per order. For order values in excess of EUR 2 million, the limitation of liability shall be agreed separately in each case.

12 Prices, terms of payment, securities

12.1 The agreed prices are lump-sum fixed prices in Swiss francs or in EURO for the contractually specified, completed and accepted delivery. They include all personnel and material expenses to be provided by the supplier for the contractually defined scope of the delivery.

12.2 If a down payment or advance payment is agreed for an order, the Supplier shall, upon request, provide equivalent security, free of charge for the Purchaser, for the down payment or advance payment to be made by the Purchaser until provisional acceptance. The down payment or advance payment shall be paid within 30 days of receipt of the Supplier's order confirmation and a bank or insurance guarantee acceptable to the Purchaser (sample provided by the Purchaser). The security shall serve as collateral until provisional acceptance for the payment to be made by the Purchaser. It shall be released by the Purchaser after signing the protocol (Art. 8 No. 1).

12.3 If the delivery is made in parts, the partial payments shall be due pro rata in accordance with the agreed payment schedule.

12.4 Payment of any agreed differences between the basic price and the final delivery price shall be made within 60 days of provisional acceptance and the final invoice. If the provisional acceptance is delayed through no fault of the supplier, the difference shall be due no later than 6 months after the scheduled provisional acceptance.

12.5 Unless otherwise agreed, 10 % of the final delivery price shall remain as a guarantee retention until after the expiry of the guarantee period or shall be paid with the last instalment after receipt of a bank or insurance guarantee acceptable to the Purchaser (Purchaser's sample). The guarantee retention shall be deemed security for the supplier's obligations under the guarantee provisions. It shall be released by the Purchaser after the expiry of the warranty period if no defects have become apparent in the delivery or if the Supplier has fulfilled its warranty obligations in full. The warranty retention shall not bear interest.

12.6 Payments shall be made net 30 days after receipt of the invoices. The due dates of the individual payments shall be indicated by the supplier.

13 Property rights

13.1 The copyrights to the work in accordance with the Copyright Act shall remain with the supplier, unless he is expressly compensated for their transfer.

13.2 From the time of the conclusion of the contract, the Purchaser shall acquire all rights necessary for the commissioning measures, the start-up, the operation, the use, the maintenance, the upkeep and the renewal of the Works, in particular rights of ownership (within the meaning of Clause 1), rights of use, exploitation, licensing and modification, unlimited in time and place. In return, the Supplier shall grant the Purchaser the non-exclusive and non-transferable rights. Free use for test purposes is permitted. The source code of software is not the subject of the transfer of rights.

13.3 If a third party asserts claims against the Purchaser for infringement of intellectual property rights in connection with the Supplier's deliveries and services, the Purchaser shall inform the Supplier without delay. The Supplier shall be liable to the Purchaser for all legal claims of third parties arising from the performance of the contract and shall be obliged to conduct any legal proceedings on behalf of the Purchaser at its own expense and to indemnify the Purchaser against any damage. The Supplier shall ensure that no delay in the performance of the contract can arise for the Purchaser as a result of such third party claims and shall be fully liable to the Purchaser for any damage caused by the delay in the performance of the contract. The Purchaser undertakes to cooperate in minimising its damage to the extent required by law.

14 Applicable law, place of jurisdiction, disputes

14.1 The legal relationship shall be governed by Swiss law. The application of the Vienna Convention on Contracts for the International Sale of Goods (Vienna Sales Convention in force since 1.3.1991) is expressly and fully excluded.

14.2 The parties acknowledge Burgdorf/BE, Switzerland, as the place of jurisdiction.

14.3 Disputes between the Purchaser and the Supplier shall, if the parties do not agree on an arbitration tribunal, be judged by the ordinary courts; the right of appeal to the Federal Supreme Court is reserved.

14.4 Differences of opinion shall not entitle the Supplier to interrupt the work and refuse any contractual performance, nor shall they entitle the Purchaser to refuse any payments due.

Status 2021, place of jurisdiction Burgdorf (CH)