

General Terms and Conditions of Purchasing

1. General

1.1 The general terms and conditions of PFISTERER SEFAG AG (hereafter Purchaser) apply exclusively. Contrary or deviating terms or conditions from contract partners are not recognised by the Purchaser, or only when expressly agreed in writing. The purchasing terms and conditions of the Purchaser still apply if the Purchaser accepts delivery from the contract partner without reservation, whilst recognising their contrary or deviating terms and conditions.

1.2 The written form is required for agreements between the Purchaser and contract partners with regard to the conclusion and execution of contracts agreed with the Purchaser. The Purchaser's terms and conditions of purchasing also apply to all future business with the contract partner.

2. Conclusion of the contract and object of the contract

2.1 The Purchaser is entitled to withdraw from orders without cost consequences before confirmation of the order with the contract partner.

2.2 The contract partner is obliged to submit their order confirmation to the Purchaser within three working days from placing the order. Sundays do not count as working days.

2.3 The contract partner is obliged to expressly indicate any varying orders on the order confirmation to the Purchaser.

2.4 In the context of an agreed order or release planning, the call-off by the Purchaser for the contract partner becomes binding insofar as they do not disagree within two working days following receipt of the call-off. Sundays do not count as working days.

2.5 Besides the terms and conditions of purchasing, the Purchaser's ordering information (i.e. all product and delivery specifications) is part of the contract. This includes all information to which the Purchaser refers in the context of the order, or contained in the documents enclosed with the order (particularly customer requirement specifications, technical documentation, etc.).

2.6 The passing on of the entire order or part thereof, to third parties / subcontractors is only permitted with the written agreement of the Purchaser.

2.7 In the event of contraventions the Purchaser may withdraw their legal rights from the contract without prejudice.

3. Contract documents and production materials

3.1 Documents and production materials of all types, which the Purchaser passes on to the contract partner in the context of ordering / commissioning, or which are manufactured or procured from the contract partner on behalf of, and at the cost of, the Purchaser, e.g. images, calculations, drawings, drafts, manufacturing guidelines, models, patterns, prototypes, materials and parts provided, tools, etc., remain or become the property of the Buyer insofar as there are no ownership rights for third parties to the contrary. Any copyrights to the documents and production materials mentioned remain the reserve of the Purchaser, insofar as there are no rights of third parties to the contrary. Production documents and items for which the Buyer has ownership rights or exploitation rights, may neither be used, reproduced, passed on, sold, pledged, nor made available to third parties, except for agreed or contractual purposes. In particular, no products should be manufactured for third parties with them. Information conveyed verbally or in writing to the contract partner by the Purchaser, must be kept in the strictest confidence by the contract partner.

3.2 Processing or reorganisation by the contract partners, of the materials provided to the Purchaser according to Point 3.1, will be made by the Purchaser. Insofar as the contract partner processes, inseparably mixes or combines the materials according to Point 3.1 with others items not belonging to the Purchaser, the Purchaser acquires joint ownership of the new items in relation to the value of the items made available (purchase price including VAT) with the other processed, mixed or combined items at the time of the processing / reorganisation. Should the mixing or combining be such that the item of the contract partner is viewed as the main item, then the contract partners confers proportionate joint ownership upon the Purchaser.

3.3 The contract partner stores the materials of the Purchaser prior to processing, properly, appropriately and separately, as the property of the Purchaser. The documents and production materials as property are to be marked as being the property of the Purchaser. The contract partner is also obliged to take charge appropriately of the jointly property of the Purchaser.

3.4 The contract partner is obliged to insure the tools (as well as the materials and parts provided) at the new value and at their own cost, against incidences of fire, water and theft. The contract partner hands over all damage claims from this insurance to the Purchaser. They hereby accept the transfer.

3.5 The contract partner is obliged to undertake the required maintenance and inspection work as well as all servicing and repair on the Purchaser's tools at their own cost and in good time. Any failures must be notified to the Purchaser by the contract partner immediately. In the event of culpable neglect, the contract partner is liable to the Purchaser for all damages arising from this.

3.6 The contract partner maintains the secrecy of all manufacturing documents as well as certain production materials, at the special request of the Purchaser. They may only be disclosed to third parties with the express agreement of the Purchaser. The obligation to maintain secrecy applies beyond the winding up of the contract. This lapses once the knowledge retained becomes generally known.

3.7 Provided that the Purchaser does not grant the order or if the order is wound up, the contract partner must hand back in perfect condition the production documents and materials belonging to it, semi-finished and finished products (including those deemed by the Purchaser to be defective) at the request of the Purchaser, without retaining copies, individual parts, etc., or they must dispose of or alter them so that they may no longer be used for production of the contract products. The contract partner must prove their disposal / alteration at the request of the Purchaser. The contract partner is not entitled to any right of retention with regard to attributable products or rights to products in respect of the Purchaser according to Point 3.

3.8 If the contract partner contravenes one of the responsibilities retained at Point 3, then the contract partner must pay the Purchaser reasonable compensation in relation to the gross order value for the order affected by the contravention of responsibilities. The Purchaser expressly reserves the right to enforce higher compensation in individual cases.

3.9 The contract partner is only permitted to mention or cite the Purchaser as a reference in any marketing materials with the express written permission of the Purchaser.

4. Prices and terms and conditions of payment

4.1 The price indicated by the Purchaser in the order is understood to be exclusive of VAT / sales tax, and is binding. The price includes packaging. VAT is always indicated separately by both parties. Price increase provisos require the express written agreement of the Purchaser. The prices apply DDP (current version of incoterms) without written agreement to the contrary.

4.2 The purchaser will process the invoices on time if this includes the order number indicated on the order. The contract partner is responsible for all consequences of not adhering to this responsibility. The contract partner must prove that he is not at fault. The contract partner must submit an original certificate or a relevant declaration for goods not manufactured in Switzerland no later than when submitting the invoice.

4.3 The Purchaser pays after receipt of the invoice, within 30 days with a 2% discount or after 90 days net, as he chooses, provided that no other agreement has been made. If the goods arrive only after invoicing, the receipt of goods is considered to be the invoice receipt date. The Purchaser pays via bank / Post account transfer or by sending a settlement cheque, as he chooses. The postmark is definitive for determining payment on time. Cash on delivery and similar, as well as any associated costs, will not be paid by the Purchaser.

5. Settlement and allocation

5.1 Settling receivables by the purchaser as part of the business relationship is only permitted if the contract partner can offset this with a receivable that is legally identifiable or one which is expressly recognised by the Purchaser. This also applies to the assertion of rights of retention.

5.2 Assignment of receivables is only permitted with the written agreement of the Purchaser.

6. Ownership of contract products

6.1 The contract partner transfers ownership to the Purchaser of the products manufactured at the time of their manufacture according to the documents or with the help of production materials from the Purchaser. Point 3 applies accordingly.

6.2 The right of the contract partner to reserve ownership is excluded for special deliveries.

7. Delivery and packaging

7.1 Partial deliveries by the contract partner are essentially not permitted; the right to this is reserved with the express agreement of the Purchaser.

7.2 The deadlines and terms given in the order are binding for the contract partner. The deliveries and services ordered must be received or delivered by the prescribed deadline at the place of destination.

7.3 If the contract partner experiences obstacles to fulfilment of the contract by the deadline, to the prescribed quality, he must immediately notify the Purchaser of this in writing. The contract partner must compensate damage arising due to notification that is delayed or not made.

7.4 Legal provisions apply with regard to the preconditions and legal consequences of delays to deliveries and services. The Purchaser is entitled to withdraw from the contract or request compensation in place of the service, after a reasonable extension. If the Purchaser requests compensation, the Supplier must prove that he is not responsible for the breach of responsibility.

7.5 The Purchaser himself may then withdraw wholly or partially from the contract, even if the contract partner is not responsible for the delivery deadline not being met.

7.6 The contract partner is obliged to use packaging corresponding to the environmental and disposal regulations in force. The purchaser reserves the right to hand back the packaging. The Purchaser only has an obligation to return by special written agreement.

8. Transportation and transfer of risk

8.1 Deliveries and services are carried out DDP to the Purchaser's factory (current version of the incoterms). The Purchaser specifies the factory with the order. Should the Purchaser assume transportation costs in exceptional cases, the contract partner is obliged to commission the carrier designated by the Purchaser, and if the Purchaser does not give instructions the contract partner may essentially select the most economical method of despatch. The Purchaser only reimburses higher costs if these may be attributed to packaging and despatch regulations expressly prescribed by the Purchaser.

8.2 Every delivery must be accompanied by a delivery note with details of the Purchaser's order number. The delivery note must also include details of gross and net weights. For partial deliveries the remaining amount to be delivered must be indicated. The despatch and delivery papers as well as other documents in respect of the order / orders must show the order number included for the order / orders. Should the contract partner not include the label with the order number, processing delays may be out of the hands of the Purchaser.

8.3 The contract partner marks the delivery / delivered goods clearly with the details according to the applicable VDA guidelines or at least with the following details: contract partner including address, description of the parts / products supplied, item no. from the Purchaser, amount, delivery date and charge number.

9. Acceptance and guarantee

9.1 If the Purchaser is prevented from accepting deliveries or services, as well as the obligations associated with them such as checking and defect lists, as a result of circumstances of forces majeure, as well as other incidents not foreseen and not the fault of the Purchaser, which only arise after conclusion of the contract, or of which the Purchaser is unaware when concluding the contract, as well as due to subsequent strikes and legal lock-outs, the Purchaser is released from such responsibilities for the period and scope of the effect of these circumstances. The Purchaser must immediately inform the contract partner of the hindrance and the reasons for it.

9.2 The Purchaser is entitled to refuse to accept deliveries before the agreed delivery and acceptance deadlines. Goods delivered early may be sent back or stored with third parties at the cost and risk of the contract partner.

9.3 If the contract partner contravenes the packaging or despatch regulations, the Purchaser may refuse to accept the contract products without incurring a delay in acceptance as a result.

9.4 Deliveries must meet the legal and official regulations applicable to their sale and usage in force at the time of delivery, particularly working safety, accident prevention and other safety regulations, fire prevention regulations for the relevant area as well as the regulations that apply at the installation location for the prevention of immissions and environmental damage (the Purchaser is awaiting the environmental prevention certificate, ISO 14001) as well as the recognised engineering regulations. The guidelines of a quality control agreement concluded with the Purchaser must be maintained. The safety systems required according to the applicable accident prevention regulations must also be supplied, without special instructions being included with the order.

9.5 The guarantee conforms to the legal provisions insofar as nothing else arises from these terms and conditions of purchasing.

9.6 Complaints about any defects are not tied into any term. Defects must be notified as soon as they are identified. The contract partner must waive any objection to delayed complaints about defects.

9.7 The guarantee period is 36 months, calculated from the transfer of risk.

9.8 Besides the legal guarantee claims, the Purchaser is entitled to demand the sending back and replacement or reworking of the faulty goods, as they choose, at the cost and risk of the contract partner. Reworking or replacement of the delivery delays the guarantee period by the time between the notification of the defects and acceptance. In the event of a dangerous situation or in cases of particular urgency, the Purchaser may rectify the defects identified themselves, or via a third party, at the cost of the contract partner, without setting a term.

9.9 The contract partner instructs the Purchaser about any possible defects and potential or arising threats from their delivery or services, which have occurred among their customers or other buyers.

10. Product liability and insurance

10.1 Should an aggrieved party make claims against the Purchaser according to domestic or foreign law, the contract partner is obliged to release the Purchaser from compensation claims at the first request, insofar as the cause is placed in the territory and organisational domain of the contract partner, and he himself is liable within the external relationship.

10.2 According to Art. 41 ff. and 419 ff OR (Swiss Law of Obligations) the contract partner is obliged, as part of its liability for damages, to refund any costs that arise from or in association with a recall action by the Purchaser. The Purchaser instructs the contract partner on the content and scope of the recall measures to be carried out, as far as possible and reasonably, and gives him the opportunity to make a statement.

10.3 The contract partner is obliged to maintain product liability insurance with a reasonable product and industry-specific sum insured. The Purchaser expressly indicates that it is principally a supplier in the energy supply industry, of which its contract partner is already aware in concluding its insurance. Insofar as the Purchaser is making ongoing compensation claims, these remain unaffected.

11. Copyright

11.1 The contract partner confirms that no laws of third parties in Switzerland or in the export countries known to the contract partner via the conclusion of contracts, will be contravened in connection with its deliveries and services.

11.2 The contract partner is obliged to release the Purchaser from any claims made by a third party due to contravention of the law, at their first written request. The obligations of this release relate to all applications required by the Purchaser from or in connection with the use of a third party. For legal disputes, the contract partner will pay the Purchaser for any legal support or enters these at its own costs at the request of the Purchaser. The Purchaser concludes agreements, particularly comparisons, with third parties, only with the agreement of the contract partner.

11.3 The statute of limitation is 15 years, calculated from the conclusion of the contract.

12. Liability

12.1 The Purchaser is liable in cases of intent and gross negligence. In cases of simple negligence the Purchaser is only liable for the contravention of a contractual duty. The obligation to pay compensation is limited in this case to damages that are typically foreseeable under the contract.

12.2 Exclusion from or limitation of liability according to Point 12.1 also applies to the personal liability of employees, staff, representatives and agents of the Purchaser.

13. Confidentiality

13.1 Information conveyed by the Purchaser in connection with the order is not considered to be confidential. Deviations to the agreement in writing remain reserved.

14. Prevention of corruption

14.1 The Purchaser will not tolerate any corruption. This includes all dealings with a person with the intent of offering a natural or legal person an advantage, carrying out / neglecting an activity contrary to duty, as well as any offer or acceptance of such benefits.

14.2 Should the contract partner contravene the existing regulations, the Purchaser is entitled to demand the termination of the contract relationship at any time without notice. Compensation claims by the contract partner are excluded in this event.

15. Place of fulfilment

15.1 The place of fulfilment for deliveries is the place of destination indicated by the Purchaser without specific identification of the head office of the Purchaser's group company in Malters, LU, Switzerland. The place of fulfilment for our payments is the place of destination indicated by the Purchaser without specific identification of the head office of the Purchaser's group company in Malters, LU, Switzerland.

16. Final clauses

16.1 The place of jurisdiction for all responsibilities under the contractual relationship is the head office location of the Purchaser (currently Malters LU, Switzerland) or at the behest of the Purchaser, the head office location of the contract partner. The jurisdiction agreement also applies to contract partners with a head office location abroad.

16.2 For all laws and responsibilities under the existing contractual relationship between the Purchaser and contract partner, as well as for all disputes associated with this, Swiss law applies exclusively (with the exclusion of the UN Convention on the International Sale of Goods – CISG).

16.3 Should a provision in these terms and conditions of business or a provision within other agreements, be or become ineffective, the effectiveness of all other provisions or agreements will not be affected by this.

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