

## **General Purchasing Conditions – Affeldt Maschinenbau GmbH**

Unless otherwise agreed, these purchasing conditions shall apply during business transactions between Affeldt Maschinenbau GmbH (hereinafter: Principal) and companies (hereinafter: Supplier). The purchasing conditions shall also apply to all future transactions between the contracting parties.

### **1. Order, conclusion of contract, explanations**

- (1) Only mandates and orders entrusted in writing shall be binding for the Principal. This shall also apply to modifications of the contract. Agreements made verbally or by phone require a confirmation in writing.
- (2) The contract between the Principal and the Supplier shall be effective upon the written order from the Principal. An inquiry made by the Principal to the Supplier prior to the order shall not pass for an order. The Supplier is obliged to confirm the order immediately.
- (3) Statements and notifications of legal relevance, which shall be given to the Principal by the Supplier after conclusion of the contract (such as setting of deadlines, reminders, statement of rescission) must be made in writing in order to be effective.
- (4) The Principal is entitled to terminate the contract upon a statement in writing by setting forth the reason at any time if he cannot use the products ordered in this operation of business due to circumstances occurring after the conclusion of the contract. This shall, in particular, apply if the products ordered were intended for a customer's order that is not carried out. In this event, the Supplier shall be remunerated for the part performance performed by him.

### **2. Prices, shipping costs, receiving agency**

- (1) The price given in the order is binding.
- (2) The Principal reserves the right to determine the shipping route, the mode of dispatch and the means of transportation and the type of packaging.
- (3) In the absence of other written agreement, the price shall include delivery and transportation including packaging to the address as given in the order.
- (4) If the place of destination is not indicated and unless otherwise agreed, delivery shall be made to the Principal's plant in Neuendorf. The goods are received Monday to Thursday from 07:00 a.m. to 03:30 p.m. and Friday from 7:00 a.m. to 02:00 p.m. at the goods receiving department at the plant. The corresponding place of destination is also the place of delivery (obligation to be performed at the creditor's place of business).
- (5) The Principal's order number must be indicated in all shipping and other accompanying documents. If this order number is lacking or if the dispatch and/or delivery documents are not in order in any other way, the Principal shall not be liable for the delay thus resulting in processing and payment.
- (6) If the Principal has agreed in writing to bear the shipping costs, the Supplier shall be obliged to choose the cheapest mode of dispatch. The shipping and/or freight charges must be separately itemized in the invoice by enclosing appropriate proof.

### **3. Delivery period, passing of risk**

- (1) The delivery period (date of delivery or time for delivery) indicated in the order shall be binding. The Supplier shall bear the procurement risk for his deliveries and services. He shall arrange production so that he can ensure delivery in due time at any time.
- (2) The Supplier is obliged to inform the Principal immediately in writing if circumstances occur or become recognizable according to which the delivery period cannot be met. The notification must contain a new, binding date of delivery.
- (3) If the last delivery date can be established from the contract, the Supplier will be in default at the end of that day without the Principal having to send a reminder. The Supplier shall be liable for all damages resulting from delayed delivery.
- (4) In the event of delivery delay, the Principal shall be entitled to legal claims without restriction. In particular, the Principal shall, after futile expiration of an appropriate grace period – unless this is dispensable in the particular case – be entitled to rescind from the contract and to claim for damages in lieu of performance. If a framework agreement has been concluded between the Principal and the Supplier, or a continuing obligation exists between them, the Principal continues to be entitled to extraordinary notice of cancellation of this agreement if the Supplier does not meet a set date of delivery for an individual delivery and the grace period set (unless dispensable) expires fruitlessly and/or the Supplier does not deliver repeatedly on time despite a warning notice.
- (5) The risk of accidental perishing and the accidental deterioration of the goods is only passed to the Principal even if shipment has been agreed upon, at the agreed place of performance. If taking delivery has been agreed upon, this shall be authoritative for passing of risk. Also in other respects, the statutory provisions of the law applicable to works and services shall apply correspondingly for taking delivery.
- (6) The Principal does not have to take delivery of advance, partial or excess deliveries not agreed upon.

### **4. Contractual Penalty**

- (1) If the Supplier is in default, the Principal may demand a contractual penalty amounting to 0.2% of the net price of the goods delivered delayed per business day, however not exceeding 5% of the net price of the goods delivered delayed.
- (2) The Principal is entitled to claim the contractual penalty in addition to the performance and as a minimum amount of damages debited by the Supplier according to the statutory provisions; assertion of other damages remains unaffected. If the Principal accepts the delayed delivery, he can assert the contractual penalty at the latest along with the final payment, even if the Principal has not separately reserved to do so when accepting the goods.
- (3) Sections 1 and 2 shall accordingly apply in the event that the Supplier is in default on removing a notified defect. The period until removal of the defect and the net commodity price's part affected by the defect shall be decisive.

### **5. Warranty**

- (1) In the event of defects, the Principal may, regardless of the legal nature of the concluded contract, choose between removal of the defect (subsequent improvement, removal of defects) and delivery of an item free of defects (substitute delivery). The period of warranty is at least 24 months. In any other respects, the statutory provisions shall apply.
- (2) All product descriptions that have become subject matter of the relevant contract, in particular by denomination or reference in the order, shall be considered as agreements on the nature of the products. It is irrelevant whether the product description comes from the Principal, the Supplier or the manufacturer.
- (3) If the Supplier does not fulfill his warranty obligation within a reasonable period of time set by the Principal, the Principal shall be entitled to have the defect remedied at the Supplier's expense or to procure a substitute delivery from another supplier at the Supplier's expense respectively. If subsequent performance by the Supplier has failed or it is unreasonable for the Principal (e.g. due to special urgency, endangering of the industrial

safety or imminent occurrence of a disproportionate damage) no setting of a period of time is required. In this case, the Supplier shall be informed immediately, if possible beforehand.

(4) The Principal will check the delivered goods in the course of the Principal's check of incoming goods regarding visible damage and visible discrepancies regarding the identity and quantity. Such defects shall be notified within a period of 8 calendar days. Furthermore, defects shall be notified by the Principal – also within a period of 8 calendar days – as soon as they have been noticed according to the conditions of the regular course of business. The Supplier will, in the cases mentioned, renounce the objection of the delayed notice of defects.

(5) For latent defects, the Supplier is obliged to compensate for uselessly spent staff costs and material costs. The Principal does not have to prove that the staff could have been allocated otherwise.

(6) Receipt of the written notice of defects of the Principal at the Supplier interrupts the running of the period of limitation for warranty claims until the removal of the defect or to the final rejection of the removal of the defect by the Supplier.

## **6. Liability**

(1) The Supplier's liability for damages, which the Principal sustains, is based upon the statutory provisions. The Supplier is liable for any form of negligence. In particular, pecuniary losses, indirect damages or consequential damages are not excluded by the Supplier's liability.

(2) If the Supplier is responsible for a product defect, he shall indemnify the Principal from any claims of third parties to the extent that the cause originates in his sphere of control / organization and the Supplier himself is liable vis-à-vis third parties.

(3) The Supplier has to take out and keep a product liability insurance with an appropriate coverage, however EUR 5.0 million minimum per bodily/property injury.

## **7. Spare parts**

(1) The Supplier shall be obliged to maintain stocks of the spare parts for the products delivered to the Principal, for a period of at least 10 years after delivery.

(2) If the Supplier decides to stop production of spare parts for the products delivered to the Principal, he shall inform the Principal immediately after such decision to terminate. This decision must be taken at least 12 months before the termination of production. In this case, the Principal is entitled to place a final order of spare parts, which must obligatorily be effected by the Supplier irrespective of the intended termination of production. Otherwise, the Supplier is responsible for compensation of the damage incurred to the Principal due to lack of spare parts. This includes, in particular, pecuniary losses, indirect damages and consequential damages.

## **8. Ownership protection**

(1) Retention of titles in favor of the Supplier shall only apply, if they pertain to the Principal's obligation to pay for the respective products of which the Supplier reserves ownership. In particular, expanded and extended retentions of title are invalid.

(2) Tools, equipment and models that are made available to the Supplier by the Principal or are manufactured for contractual use and separately invoiced to the Principal by the Supplier remain the ownership of the Principal or their ownership are passed to the Principal. They shall be marked by the Supplier as the Principal's property, stored carefully, protected against damages of any kind and only be used for contractual purposes.

(3) The Principal reserves the ownership and the copyright of the provided figures, plans, drawings, calculations, implementation instructions, product descriptions and other documents. Such documents shall only be used for the contractual performance, kept secret vis-à-vis third parties and immediately returned to the Principal after execution of the contract.

## **9. Property rights of third parties**

(1) The Supplier shall be liable that his delivery and his utilization do not infringe any patents or other property rights of third parties at home and abroad.

(2) The Supplier is obliged to indemnify the Principal from all claims which third parties lodge against him because of the infringement of industrial property rights mentioned in section 1 and to reimburse all necessary expenses in relation to this claim to the Principal. This claim is valid irrespective of the Supplier's fault.

## **10. Payment terms**

(1) Unless otherwise agreed with the Supplier on an individual contract basis, the following payment terms shall apply: For payments within 14 days after complete delivery and receipt of the invoice, the Principal is entitled to deduct a 3% discount from the invoiced amount (net amount). In other respects, the invoice will be paid within 30 days net upon receipt of the goods and the invoice. The date of debit shall pass for payment date. The complete delivery also includes handing over of ordered or usual installation manuals, operation manuals, maintenance provisions, drawings, certificates and other documents and papers (also regarding customs, importation, authorization, examination, etc.). If taking delivery of the performance has been agreed upon, the Principal shall pay – unless otherwise agreed – within 14 days minus 3% discount or within 30 days net after completion, taking delivery, delivery of demanded drawings, documents, papers and certificates and the receipt of the final invoice.

(2) The Principal shall not owe any default interest. In the event of default in payment, the Principal shall owe default interest in the amount of five percentage points above the base rate pursuant to Art. 247 of the German Civil Code (BGB). For the occurrence of default of the Principal, the statutory provisions shall apply. In any case, however, a reminder by the Supplier is necessary.

(3) Rights of setoff and retention as well as defense of failure to perform the contract are due to the Principal to the extent provided by law. The Principal is, in particular, entitled to withhold due payments as long as he is entitled to claim incomplete or defective performances from the Supplier. Payment without reservation does not constitute acceptance of duly provision of the performance and issuing of invoice respectively.

(4) Towards the claims of the Principal, the setoff and execution of rights of retention are only admissible for claims being res judicata or recognized by the Principal.

(5) In the event of unduly issued invoices, the Supplier shall bear the additional costs thus incurred. An unduly invoice does not constitute the due date of the Supplier's claims.

## **11. Secrecy**

(1) Unless otherwise agreed, the Supplier and Principal obligate themselves to observe secrecy about all issues of an order. The contracting parties will ensure that this obligation to secrecy is also adhered to by affiliated companies. As affiliated companies shall be considered those according to Art. 15 et seqq. of the German Stock Corporation Act (Aktiengesetz) with the extension that a direct or indirect interest amounting to 25% is already sufficient.

- (2) Generally accessible information and the obligation to passing information on to courts and authorities remain unaffected by this obligation. In this case, the Supplier is obliged to inform the Principal immediately in writing prior to passing information on.
- (3) In the case of infringement of this agreement, the contracting party concerned may demand a contractual penalty amounting to 10,000 euro. Further claims due to the infringement of this contractual obligation remain unaffected.

**12. Non-assignability**

- (1) The Supplier shall not be entitled to assign his claims from the contractual relationship to third parties. This shall not apply if said claims are money claims. The Supplier will immediately inform the Principal of the assignment.
- (2) Provided that an assignment is effective according to Art. 354 a of the German Commercial Code (HGB), the Principal's right to setoff against counterclaims against the new creditor is not affected.

**13. Bindingness, venue, applicable law**

- (1) Only these General Purchasing Conditions shall apply. General Terms and Conditions of the Supplier shall only apply to the extent the Principal has explicitly agreed to them in writing. Individual agreements between the Principal and the Supplier shall prevail against these Purchasing Conditions.
- (2) Unless otherwise agreed by contract, the place of delivery for both parties and the sole – also international – venue for any disputes from the contractual relationship is Neuendorf bei Elmshorn. The Principal is, however, entitled to choose the place of general jurisdiction of the Supplier.
- (3) The contractual relationship shall be governed by German law excluding the UN Sales Convention.

Neuendorf, June 2010