

TRÜTZSCHLER



General Terms and Conditions of Purchase

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Art. 1 Scope of Application

These General Terms and Conditions of Purchase shall exclusively apply between Trützschler Switzerland AG, Winterthur (Switzerland) as BUYER and the SUPPLIER to all orders of the BUYER and to all contracts of purchase and delivery or services made by the SUPPLIER. SUPPLIER's deviating terms and conditions of sale and delivery shall not be recognized and will not be binding upon the BUYER, unless expressly agreed to in writing by the BUYER. BUYER's Terms and Conditions of Purchase shall even apply if the BUYER accepts the SUPPLIER's goods and services without reservation although the BUYER is aware that the SUPPLIER's conditions are contrary to or different from the BUYER's Terms and Conditions of Purchase. BUYER's Terms and Conditions of Purchase shall apply to the BUYER's future purchase orders without any need for another express agreement to that effect. Any contract amendments, additions and ancillary agreements must be in writing.

BUYER's Terms and Conditions of Purchase shall apply only in business dealings with companies, other businesses and equivalent participants in commercial transactions. Any individual contracts and agreements made between the SUPPLIER and the BUYER shall have precedence. It is agreed that the Terms and Conditions of Purchase shall supplement these contracts and agreements.

Art. 2 Placing orders

Only written orders shall be valid. The SUPPLIER shall confirm the order in writing within a period of 5 working days (Working days = Monday – Friday). Any declaration of acceptance received thereafter shall be deemed to constitute a new offer by the SUPPLIER on the basis of these Terms and Conditions of Purchase.

As a matter of principle, the SUPPLIER shall fulfill his existing obligations by supplying OEM products exclusively. In exceptional cases and with the written consent of the BUYER, The SUPPLIER may subcontract with third parties in order to fulfill his obligations to the BUYER.

To the extent that this is acceptable to the SUPPLIER, the BUYER shall be entitled to demand reasonable modifications of the goods or services to be supplied even after the contract was concluded. Any changes resulting therefrom shall be appropriately taken into account with respect to the date of delivery and any increase or reduction in cost and only valid with the approval of the BUYER.

Art. 3 Prices and payment

The price indicated in the purchase order shall be binding. Unless agreed otherwise in writing, the price shall include delivery duty paid (Incoterms 2020). Unless agreed otherwise in writing, place of destination shall be the address specified by the BUYER (in general the BUYER's delivery hub in Germany). Price increases shall be valid only if confirmed by the BUYER in writing.

After delivery, invoices shall be submitted to the BUYER separately in duplicate, specifying the order number, purchase order item and commission number. In the case of shipments within the European Union, the respective Intrastat number and the weight must also be indicated. If waste disposal is involved, the SUPPLIER shall enclose the respective waste disposal permit on his own initiative.

The value-added tax shall be shown separately on the invoice.

Unless agreed otherwise in writing, the purchase price shown on the purchase order shall become due 30 days from completion of the delivery/service and receipt of the invoice. If the purchase price is paid within 14 days from completion of the delivery/service and receipt of the invoice, the SUPPLIER shall grant a 3 % discount. The BUYER shall be entitled to rights of offset and retention to the extent permitted by law.

Art. 4 Minimum wage

The SUPPLIER guarantees that he shall at least pay his employees the legal minimum wage and that he meets all other commitments from any applicable minimum wage laws without exception.

The SUPPLIER further guarantees, that if in connection with an order he engages any subcontractor(s) or external staff technically employed by labour service providers ("employment brokers" or whatever the national term may be) for the provision of works and services hereunder he shall legally bind such subcontractor(s) and/or labour service providers to assure that they pay at least the legal minimum wage to their employees on time.

If and to the extent that employees of a labour service provider or employees of a subcontractor engaged by the SUPPLIER bring direct claims for omissions by their employer against the BUYER (in particular for outstanding minimum wages), the SUPPLIER shall indemnify the BUYER against and hold the BUYER harmless from any such claims and any and all costs arising to the BUYER regarding such claims.

The SUPPLIER shall furnish the BUYER at the BUYER'S request without undue delay with any and all information and documentation necessary for the BUYER to fulfill his own obligations (resulting from mandatory Swiss or foreign laws) in respect of monitoring and documenting compliance with the aforementioned laws and regulations regarding minimum wages. If required under mandatory law or in the auditor's/group auditor's opinion required for certifying the BUYER'S financial statements, the SUPPLIER shall at the BUYER's request without undue delay provide proof of his compliance with the aforementioned laws and regulations regarding minimum wages.

The provisions in this sec. 4 shall apply mutatis mutandis to any future laws and regulations which enhance the scope of the of employee protection over and above the protection of minimum wages.

Art. 5 Packaging

The goods shall be packaged in accordance with the HPE (German Federal Association for Wooden Packages, Pallets and Export Packaging) packaging guideline, as amended and valid at the time of placing the order. The amount of packaging material used shall be no more than needed for this purpose.

The SUPPLIER shall make sure that the packaging is in compliance with applicable environmental regulations. The SUPPLIER shall take back freight prepaid any packaging material that is reusable or not environmentally appropriate.

Art. 6 Term of delivery

The dates of delivery specified on the purchase order shall be binding.

The SUPPLIER is obligated to inform the BUYER promptly in writing if circumstances arise or can be foreseen by the SUPPLIER which makes it impossible for the SUPPLIER to comply with the agreed date of delivery.

In the event of a delay in delivery, the BUYER shall be entitled to the statutory claims. Specifically, after an adequate period of time granted by the BUYER has expired without results, the BUYER shall be entitled to withdraw from the contract or to demand damages instead of the goods or services. Specifically, granting of an additional period will be dispensable if it was obvious that the BUYER was only interested in a timely delivery.

If the delay in delivery is the result of force majeure (such as natural disasters, war, labor disputes, government intervention, etc.), which are beyond the control of the SUPPLIER, the term of delivery shall be extended accordingly. The SUPPLIER shall inform the BUYER promptly orally or in writing of the beginning and the end of such circumstances and at the same time agree with the BUYER on appropriate countermeasures, such as the fastest possible transportation, and carry them out.

The BUYER shall be released in whole or in part from the obligation to accept the ordered goods/services and shall be entitled to withdraw from the contract insofar as, taking into account the financial interests of the BUYER and due to the delay caused by force majeure, the goods/services can no longer be used by the BUYER.

Art. 7 Performance/ place of performance/ passing of risk/ documents

The SUPPLIER shall perform the contract in compliance with all the requirements of building, occupational safety and environmental laws as well as all the technical regulations which contain the generally accepted rules of engineering, environmental and safety engineering. If the contract is for supplying machines or plants, this shall include all the goods and services needed for a start-up in accordance with the rules and permits.

Unless agreed otherwise in writing, the delivery shall be duty paid (Incoterms 2020).

Unless agreed otherwise in writing, delivery shall be at the address specified by the BUYER (in general the BUYER's delivery hub in Germany). Place of performance shall be the address of delivery specified by the BUYER (in general the BUYER's delivery hub in Germany). The risk shall pass only with the delivery of the ordered goods at the delivery address specified by the BUYER. In the event that the BUYER indicates in the purchase order an order number, commission number or item number, the SUPPLIER shall be obligated to enter this number on the entire correspondence and on all shipping documents and delivery notes.

Special documents required by law, such as safety data sheets, in particular for the delivery of hazardous substances, must accompany the delivery in the currently valid version and without any separate request.

The extra processing required by the BUYER because these numbers were entered incorrectly or not at all, or because of erroneous or missing documentation, and the consequences of any delays caused thereby shall be borne by the SUPPLIER.

Art. 8 Security Standards

The SUPPLIER shall comply with appropriate standards of security with respect to goods, staff and business partner to ensure the safety of the supply chain and will a safety explanation send to the BUYER upon request any time.

Art. 9 Defects of quality

The SUPPLIER warrants that the goods and services to be supplied are free of defects, comply with the specifications as stipulated in the order, have been developed and manufactured in accordance with the state of the art, are usable without limitation for the purpose for which they are intended under the terms of the contract and are in compliance with all relevant legal provisions, regulations and directives imposed by governmental authorities and specialist associations.

The BUYER undertakes a control upon delivery only in respect of damages which can be detected by exterior inspection and variances in quality and quantity which can be detected from the outside. The notification of any such defect shall be in time if the SUPPLIER receives it within a period of 5 working days from delivery of the goods. The BUYER shall notify any other defects without undue delay as soon as they are discovered within the framework of the ordinary course of business. The notification of any such defects shall in particular be in time if the SUPPLIER receives it within a period of 5 working days, counted in the case of open defects from the end of unpacking the delivered goods at the place of their final destination of ordinary use, and counted in the case of hidden defects, from discovery of the defect. The SUPPLIER waives any and all rights to reject such a notification of a defect as belated. If the unpacking or the discovery of a hidden defect is - within the framework of the ordinary course of business - made by a third party (e.g. a customer of the BUYER) the notification period shall only begin to be counted from the moment the BUYER receives notice of the defect.

The BUYER shall be fully entitled to the statutory claims based on defects; the BUYER shall be entitled in any case to demand, at the option of the BUYER, that the SUPPLIER remedy the defect or replace the defective good with a new one. The BUYER expressly reserves the right to damages, including but not limited to the right to damages instead of receiving the goods/services. In case of imminent danger, the BUYER shall be entitled to remedy the defect at the SUPPLIER's expense.

The limitation period of claims based on defects in quality shall be 24 months from the point in time when the delivered goods are complete, free of defects and put into service, and shall end no later than 36 months from delivery.

The SUPPLIER is obliged for the purpose of supplementary performance to bear the relevant expenses, including all costs arising in connection with the defect detention and remedial expenses, even if the expenses are incurred by the BUYER or the customers of the BUYER, in particular investigation cost, removal and installation costs, shipping, travel, labor and material costs. This applies even if the expenses increase because the goods and services are located at a different place than the place of performance.

Art. 10 Proprietary rights

The SUPPLIER warrants that no rights of third parties shall be violated in connection with and by the goods/services he delivered.

In the event that a third party asserts claims against the BUYER for infringement of proprietary rights in connection with the goods/services supplied, the SUPPLIER shall be obligated to indemnify the BUYER against these claims when first requested by the BUYER in writing.

The SUPPLIER's duty to indemnify shall apply to any expenses which the BUYER will necessarily incur as a result of or in connection with the claim asserted against the BUYER by a third party. The limitation period shall be 36 months from the passing of risk.

Art. 11 Product liability

To the extent that the SUPPLIER is responsible for personal injury or damage to property caused by a faulty product supplied by the SUPPLIER, the Supplier shall be obligated to indemnify the BUYER to that extent and when first requested against any third party claims for damages resulting therefrom.

Furthermore, within the scope of the SUPPLIER's liability for injury or damage as defined in para. 1, the SUPPLIER shall also be obligated to refund any expenses which are incurred in connection with a recall action carried out by the BUYER for whatever legal reason (including in particular any expenses the BUYER deemed reasonably necessary or useful and the full recovery of all expenses against the SELLER as a joint and several debtor internally).

The SUPPLIER shall be obligated to maintain at the SUPPLIER's expense a product liability insurance with adequate coverage. Any additional claims for damages shall remain unaffected.

Art. 12 Retention of title

The BUYER shall retain title to any parts or materials that the BUYER may make available to the SUPPLIER. Any processing or transformation by the SUPPLIER shall be carried out on the behalf of the BUYER.

If the goods to which the BUYER retains title are processed with other objects not belonging to the BUYER, the BUYER shall acquire co-ownership of the new good in proportion of the value of the BUYER's goods to the value of the other processed objects at the time of processing.

If the goods made available by the BUYER for manufacturing of the goods to be delivered is inseparably mixed or connected with other objects not belonging to the BUYER, the BUYER shall acquire co-ownership of the new good in proportion of the value of the good to which the BUYER retains title, to the value of the other mixed or combined objects at the time of the mixing or combining.

If the processing is done in such a way that the SUPPLIER's good must be considered to be the main good, it is understood that the SUPPLIER shall transfer co-ownership to the BUYER on a prorated basis.

The SUPPLIER shall hold the sole property or the joint property in custody for the BUYER as the trustee.

Art. 13 Spare parts and expendables

The SUPPLIER shall ensure that spare parts and expendables will be available for a period of 10 years from delivery so that the goods can be kept in working order.

Art. 14 Quality assurance/ inspection

Upon request, the SUPPLIER shall provide evidence that he has introduced a quality assurance system. The SUPPLIER shall make sure that the goods to be supplied by the SUPPLIER are in compliance with BUYER's quality specifications and the SUPPLIER shall provide proof of this compliance. The BUYER shall have the right to inspect by prior appointment, in the SUPPLIER's plant or in the plants of SUPPLIER's subcontractors, the goods and/or the progress in manufacturing. The inspection may be carried out by the BUYER, a third party charged with this task or together with the customer of the BUYER.

Neither the quality assurance nor the inspection by the BUYER or a third party charged with this task shall signify an acceptance in the legal sense and it shall not release the SUPPLIER from his duties of performance and warranty.

Art. 15 Manufacturing recodes/ tools

Any tools, models, matrices, templates, samples, drawings, calculations or other records, which the BUYER makes available to the SUPPLIER for carrying out BUYER's order, embody BUYER's know-how and shall remain the property of the BUYER. They must be used exclusively to carry out BUYER's order and may not be made available to third parties, neither for inspection nor for any other use, without the express prior consent of the BUYER.

This requirement of prior consent shall also apply to supplying third parties with products or parts which the SUPPLIER is manufacturing by making use of the BUYER's know-how. Individuals or companies, which are involved in any manner with the distribution of the products of the BUYER, shall also be deemed to be third parties.

Tools shall become the property of the BUYER if the SUPPLIER manufactures them, or has them manufactured, specifically for carrying out BUYER's order and if the manufacturing cost has been amortized via the prices paid by the BUYER for the goods he delivered.

If our contractual relationship ends – for whatever legal ground – before the cost of manufacturing the tools has been amortized in full, the BUYER shall be entitled, but not obligated, to acquire ownership of the tools by paying the amount which at the time of termination is still unamortized.

The SUPPLIER agrees to insure at SUPPLIER's expense the tools, which are the property of the BUYER, against loss by fire, water and theft. The SUPPLIER is obligated to carry out in a timely manner any needed maintenance and inspection work at the expense of the SUPPLIER. The SUPPLIER shall promptly report any failures.

In the event of non-compliance with these duties, the SUPPLIER shall be obligated to compensate the BUYER for any loss resulting therefrom. Any right of retention with respect to the BUYER's tools and records is expressly excluded.

Art. 16 Confidentiality/Non-disclosure

The SUPPLIER agrees not to disclose BUYER's know-how (see art. 15) and any other commercial and technical information as well as other operational matters of which the SUPPLIER gains knowledge in the course of the business relationship with the BUYER, for as long as these information or operational matters do not become public knowledge independently from the SUPPLIER's conduct. Subcontractors shall be obligated to enter into a non-disclosure agreement with the same content. This non-disclosure undertaking shall continue to apply after the end of the contract.

Art. 17 Environmental and social liabilities

The SUPPLIER must comply with the European Community Regulation REACH (EC 1907/2006) and delivered products or parts must not contain any product, material or substance prohibited by the legislations or regulations applicable in the SUPPLIER's country, the European Union and all countries in which the products or parts are marketed and used.

The SUPPLIER must furthermore comply with any and all legal requirements regarding human rights protection, labour conditions, responsible use of natural resources and similar areas (e.g., obligations resulting from so-called "supply chain"-legislation and similar laws and regulations) which are legally mandatory for the SUPPLIER or for the BUYER in his business dealings with the SUPPLIER. Any such legal requirements resulting specifically from Swiss law shall be brought to the SUPPLIER's notice by the BUYER for the BUYER then to respect as his own obligations.

The SUPPLIER shall furnish the BUYER at the BUYER'S request without undue delay with any and all information and documentation necessary for the BUYER to fulfill his own obligations (resulting from mandatory Swiss or foreign laws) in respect of monitoring and documenting compliance with the aforementioned laws and regulations. If required under mandatory law or in the auditor's/group auditor's professional opinion required for certifying the BUYER'S financial statements, the SUPPLIER shall at the BUYER's request without undue delay provide proof of his compliance with the aforementioned laws and regulations.

Art. 18 Export regulations/ export requirements/ certificate of origin

To comply with the statutory export regulations, the export classifications must be given on the order confirmation in the case of deliveries of goods or services that are governed by national and/or EU export regulations.

In addition, all invoices and delivery documents must basically show the classification of the goods according to the national export regulations, along with all customs relevant information (HS Code, country of origin) according to the relevant national and international statutory requirements.

In the case of cross-border transport, the SUPPLIER must enclose, free of charge, the valid preference certificate (declaration of origin, goods traffic certificate, preference certificate of origin, etc.) which is required in the destination country of the goods, for import or for preferential import tax payment.

The SUPPLIER is obliged to obtain all export licences at the expense of the SUPPLIER.

The SUPPLIER undertakes to find out in good time about possible export bans or export restrictions. Under such circumstances, it is agreed that there will be a right of withdrawal free of charge.

Art. 19 Applicable law, jurisdiction

Exclusive legal venue for any and all disputes in relation to orders of the BUYER and to all contracts, both in relation to purchases and delivery or services by the SUPPLIER to the BUYER, shall be the legal seat of the BUYER (currently Winterthur / Switzerland). However, the BUYER shall in his own free discretion also be entitled to sue the SUPPLIER at the SUPPLIER's principal place of business or at the place of a permanent establishment of the SUPPLIER.

The legal relationship for orders of the BUYER and for all contracts, both in relation to purchases and delivery or services by the SUPPLIER to the BUYER, shall be governed exclusively by Swiss substantive law, excluding application of the United Nations Convention on Contracts for the International Sale of Goods.

Art. 20 Other provisions

If the SUPPLIER suspends payment or if a petition for insolvency proceedings regarding the assets of the SUPPLIER or for composition proceedings before a court or out of court is filed, the BUYER shall be entitled to withdraw from the contract. If the BUYER does not withdraw from the contract, the BUYER shall be entitled to withhold an amount of no less than 10 per cent of the purchase price as a security for any claims under the contract until the contractual period of limitation for claims based on defects has expired.

The SUPPLIER agrees that the BUYER shall be allowed to process and use to the extent permitted by the applicable data protection at the personal data the BUYER received from the SUPPLIER in the course of or in connection with the business relationship of the parties.

Should any provision of these General Terms and Conditions or any provision of other contractual stipulations between the parties be or become ineffective, this shall not affect the effectiveness of the remainder of these Terms and Conditions or stipulations. In this case, the parties to the contract shall be obligated to replace the ineffective provision by another provision which comes closest to achieving the intended economic result.