

FAM Magdeburger Förderanlagen und Baumaschinen GmbH

Purchase Conditions

A) Conclusion of a Contract

1. The following conditions are applicable to all our orders and the settlement thereof. These conditions will be accepted with the execution of our order. Modifications and supplements require the written form.
2. Opposing General Terms and Conditions of the Supplier are not valid, even when not being contradicted in a single case.
3. Supply contracts (order and acceptance) and calls of supplies as well as modifications and supplements thereof require the written form. Calls of supplies may as well be the result of data transfer.
4. In case the supplier does not accept the order within a period of two weeks, we are entitled to countermand the order. Calls of supplies will become binding at the latest when the supplier does not revoke in writing within a period of two weeks.
5. In case particular stipulations other than the present conditions will be agreed upon due to a certain order, these conditions are applicable subordinately and supplementary.

B) Quotations

1. Quotations shall be made free of charge and without obligation for our part.
2. Drawings, models, patterns and other documents prepared according to our instructions and being provided to the supplier must not be used other than for the preparation of the quotation and have to be immediately forwarded to us on demand.

C) Prices, Payments, Passing of Property

1. Agreed prices are fixed prices, being valid until the settlement of the order will be terminated. Additional increases, no matter for which reason, are excluded. Especially surcharges for import duty, duties and other charges are excluded.
2. The agreed prices are free location of use, including incidentals, packing and freight expenses. In case of agreement on 'ex-work' supplies, our forwarding instructions are relevant. We shall only accept the cost occurring thereof.
3. Invoices have to be made out in duplicate. We are entitled to pay by means of cheque or girocheque transfer respectively. In this very case the payment will be effected in time when the cheque has been mailed on the due date or when the transfer has been received on the due date by our bank/ our giro centre.
4. Payments will have to be made - unless otherwise arranged - either within 14 days on deduction of 3 % discount or within 30 days without deduction. The prescribed periods will start on receipt of invoice, however not before the date of inspection of goods received and, as far as documentations and test certificates being part of the delivery scope, not before the contractual delivery. Delayed payments based on non-regular delivery papers or incomplete statements on invoices entitle us to appropriate deductions. Expirations due to premature delivery of goods depend upon the agreed terms.
5. We are entitled to balance and to charge against the supplier's claims. Provisions for a charge have to be considered as per the moment of origin and not per the expiration of claims. It is indifferent in case of charge whether cash payment, payment by means of bill/ cheque or other services have been arranged. In case of different expirations of claims and liabilities, settlements will be made by appropriate value.
6. Payments will be made with proviso to the invoices being reviewed by us.
7. Supplier's non-contractual accomplishment of liabilities or conditions coming to our knowledge after publication of the order which are adapted to depreciate the supplier's credit standing or the possibility for a regular and complete contract fulfilment by the supplier entitle us to retain further due payments up to the amount of the double value of removal cost or claims on the supplier concerning security services.

8. In case of down payment, the ordered goods pass into our possession forthwith, even in case they will not yet have been delivered. Supplier will deposit the items free of charge and has to insure them against fire and other perils until delivery. Payments have no influence on the supplier's duty of guarantee.
9. The supplier is not entitled to cede his claims to us or to withdraw these claims by a third party without our preceding written consent which may not be refused inequitably. In case an extended reservation of title will be at issue the consent should be considered as conferred.

D) Excess and Short Deliveries, Notice of Defect

1. Excess and short deliveries are inadmissible.
2. We reserve our right to reprove the supplier for the appropriate warranty claims until the expiration of the limitation period concerning defects of delivery as soon as they being determined as to the ordinary course of business. In so far, the supplier waives the defence of filing a delayed complaint in respect of a defect of goods.

E) Infringement of Third-Party Rights

The supplier is held responsible that third-party rights will not be infringed by delivery, using and distribution of the purchased goods as well as by utilisation of an eventually realised service from his part. Supplier thus will exempt us without any restriction from eventual third-parties' claims.

F) Maintenance of Secrecy

1. The contracting parties commit themselves to treat any non-evident commercial and technical details becoming public by mutual business relationships as trade secret.
2. Confidential product information, models, drawings and similar information must not be left to or be disclosed in any way to an unauthorized third party. Reproduction of such items is only admissible within the framework of operational requirements as well as copyright provisions.
3. Left data carriers, models, productions, drawings, etc. have to be returned unsolicited after execution of the order; a right of retention will be excluded in so far. They have to be as well kept secret just as models, swages, cutting and stamping tools and may only be reproduced with our explicit written authorization. They may only be used for the execution of our order, and must not be sold nor left nor disclosed in any way to a third party.
4. Sub suppliers have to be held responsible appropriately.

G) Dates and Periods of Delivery, Acceptance Dates and Periods

1. Arranged dates and periods are binding. Deliveries and partial deliveries in advance will require our explicit written authorization.
2. The purchase of goods at our works is decisive for the compliance with a set date of delivery or period. In case 'free buyer's address' has not been arranged, the supplier has to provide the goods in time under consideration of the usual time required for loading and dispatch.
3. In case the dates cannot be observed by the supplier due to any acceptable reason, we are entitled - after setting an additional respite and notwithstanding any extended legal claim - to procure replacements by a third party and / or to claim damages due to default. Any additional costs due to delayed delivery or services have to be replaced by the supplier.
4. Acceptance of a delayed delivery or service does not constitute the waiving of damage claims.

5. In case the supplier might foresee difficulties regarding production or material procurement or in case of circumstances which cannot be influenced and which might prevent the supplier from a delivery in time and required quality, the supplier has to inform us immediately.
6. In case of force majeure and operational breakdown whatever - as far as they have not been intentionally or recklessly caused by us - as well as other unforeseen incidents making the acceptance even more difficult or impossible, we are entitled to adequately defer the dates and periods of acceptance without the supplier having any claims of damage or us having deferred quantities being charged to our account.

H) Quality, Processing Orders, Prevention of Accidents

1. The supplier is obliged to perform the commissioned supplies and services according to the arranged specifications as well as under consideration of the latest state of technology.
2. Regarding processing orders we shall remunerate the processing expenses only for those parts being delivered in useful state according to the arranged specifications and under consideration of the latest state of technology. The supplier may only use material for the execution of the order which has been provided by us and which has to be again reviewed on the supplier's own responsibility. In case the supplier manufactures material different from the material having been provided by us, he will be held responsible for any thus occurring damage. The material costs for defective parts due to processing sub-standard goods having been caused by the supplier, shall be borne by the supplier.
3. The ordered parts, instruments, plants, machines etc. to be delivered including fittings have to comply with the legal provisions concerning technical work materials (Act dealing with Machine Protection), the appropriate provisions concerning the prevention of accidents, the employment protection regulations, the generally accepted regulations concerning labour safety and medical care and - if necessary - with further relevant provisions. Eventually required safety devices or equipment are part of the delivery scope.

I) Warranty

1. The supplier is held responsible for the duration of the warranty period for defects of goods or service - no matter whether they have been noticed immediately or later - in that way, that we for our part shall be entitled notwithstanding to our remaining rights to claim at our option replacements free of charge, removal of defects free of charge or an appropriate price reduction respectively. In urgent cases we are authorized on preceding agreement to re-move defects or having removed those defects by a third party if considered to be required in a particular case. Thus occurring costs shall be borne by the supplier.
2. The warranty period for deficiencies in quality shall be five years for any performance relating to the construction of a building or any delivery of products which are normally used for the construction of a building causing the building's defectiveness. In any other cases of delivery and/or performance deficiencies the warranty period shall be two years, but at least one year after the in-service-date of the delivered product. For any items which – for any reason – cannot be placed in-service the warranty period starts at the date of delivery.
3. In case the customer/buyer notifies the seller of a defect of the product delivered or the defective performance prior to the end of the warranty period, the continuation of the warranty period shall be suspended. The suspension ends at the date six months after the written notification of the defect was received by the seller/supplier. In case the parties are in negotiations over warranty claims or facts and circumstances causing these claims, the suspension of the warranty period carries on in excess of the said six month period until the date at which one of the parties declare in writing to discontinue the negotiations. At the date of the ending of the suspensions the warranty period continues to progress and does not start from the beginning.
4. The seller/supplier guaranties for any repair works or substitute deliveries to the same extent as for the original delivery/performance. The warranty period for the substitute delivery or the delivery of the repaired item commences upon customer acceptance and/or delivery.

J) Revocation of a Contract

In case of force majeure we are entitled to terminate the entire contract or parts of the contract or to demand the execution at a subsequent time without the supplier thus having any claims against us. Any circumstance such as monetary and trade or other sovereign measures, strikes, lock-outs and operational breakdown essentially rendering more difficult or impossible the acceptance of delivery has the equal status as force majeure. With regard to contracts for work and services and contracts for work and materials we are entitled for whatever reason to terminate the entire contract or parts of the contract or to demand the execution at a subsequent time without the supplier thus having any damage claims against us. In such cases we are held responsible to reimburse the supplier only those expenses that can be established and that actually accrued up to this time but not the loss of profit or the risk premium. Payments that have already been made will thus be allowed as credit. Pieces of work that have already been worked on or partial deliveries respectively have to be returned on demand.

K) Place of Performance

Place of performance concerning the supplier's liabilities shall be the place of employment if parties will be traders except small traders as defined by § 4 HGB (Commercial Code).

L) Data concerning the Supplier

Based on the business connections or in relation to these connections we are entitled to store and to use any data concerning the supplier received no matter whether they originate from the supplier himself or from a third party.

M) Jurisdiction and Applicable Law

1. Legal action has to be taken at the court of Magdeburg being competent for our registered office in case of any dispute arising from the contract, provided the supplier being trader, legal person or separate estate under public law. We are also entitled to take legal action at the supplier's principal place of business or any other legal place of jurisdiction.
2. Adjective and substantive law of the Federal Republic of Germany are applicable. Application of standard United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

N) Partial Invalidity, Clearness Clause

1. In the case that any of the provisions and regulations described above are or may become invalid due to legal, factual or any other reason, those provisions shall be converted into an acceptable provisions which effectively fulfil the same purpose as the intended provisions.
2. Headings shall only serve for better clearness, having no substantive importance especially not as final arrangement.