

General Terms of Purchase of Mazurczak Elektrowärme GmbH

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I. Scope

We order supplies based on these general terms of purchase. The terms and conditions of the supplier shall not apply unless they have been expressly acknowledged by us in writing. The acceptance of deliveries or services does not imply acknowledgment of terms and conditions of the supplier. Our terms of purchase also apply to all future businesses dealings with our suppliers.

II. Conclusion of the Contract, Documents, Nondisclosure

1. Orders shall not be legally binding until we have issued them in writing. Orders placed verbally or by telephone require a supplemental written confirmation by us. This also applies to changes or amendments in the contract.
2. If you do not accept our order within 10 calendar days, we are entitled to cancellation. If you accept our order with variations, you must expressly notify us of these variations. A contractual agreement only comes into existence when we have approved these variations.
3. We reserve herewith any industrial property rights and copyrights pertaining to drawings, plans, images and other documents left to the supplier for the submission of proposals or from the placement of orders. The supplier shall not make these accessible to third parties without our express written consent. If they are provided to him in connection with an order, he may use them solely for the purpose of processing the order. They are to be returned to us without request if no order is made or if a placed order has been processed.
4. We shall be able to demand changes in the delivery item even after conclusion of the contract, to the extent this is reasonable for you. The ramifications from both sides, especially concerning the excess costs and reduced costs, shall be appropriately taken into account in regard to this change.
5. The creation of proposals is free of cost and without obligation for the client.

III. Quality, Health protection, Environmental protection

1. As far as is applicable, the agent shall maintain a quality security system, for example pursuant to DIN EN ISO 9001-9003. The client has the right to inspect the system after clearance.
2. In the case that the agent delivers material which is categorized as a hazardous substance for the purpose of the Ordinance on Hazardous Substances, the agent is obligated to make the EC material safety data sheet (§ 4 GefStoffV) available without request before delivery takes place.
3. The agent is forbidden from using cancer-causing substances.

IV. Prices, Delivery, Packaging

1. The stipulated prices are fixed prices and exclude supplementary claims of every kind.
2. If the delivery has not been arranged free domicile, DDU or DDP (INCOTERMS 2000), the supplier shall prepare the merchandise in a timely manner under consideration of the time for loading and shipping to be coordinated with the carrier.
3. If delivery takes place earlier than agreed, we reserve the right to return shipment at your cost. If no return shipment takes place when delivery is early, we will store the merchandise until the appointed delivery date at your cost and risk. In the case of early delivery, we reserve the right to postpone payment to the appointed maturity date.
4. Our order number should be specified on dispatch notifications, letters of consignment, invoices and all correspondence. You are responsible for all consequences resulting from noncompliance with this obligation.
5. The supplier is to utilize environmentally friendly packaging materials. The take-back obligation of the supplier for packaging complies with the standards of the packaging regulation. The goods shall be properly packaged according to custom and usage, to the extent not otherwise arranged. Our supplier shall be liable for damages resulting from inadequate packaging.

V. Invoice, Payment

1. Invoices are to be issued with all necessary evidences of and references to the purchase order date. Delays due to non-compliance with these specifications are the responsibility of the supplier. In such cases, payment periods do not begin to run before submission of testable invoices.
2. We have the right to make payment less 3% cash discount within 14 calendar days, or the net amount after 30 calendar days. The periods begin upon receipt of the invoice; however, not before the delivery or service has been completed defect-free.
3. We are entitled to the legally prescribed set-off rights and rights of retention pursuant to the conditions mentioned there.

VI. Deadlines, Time periods, Contractual penalty

1. Stipulated delivery dates and periods are binding. The arrival of the delivery at the receiving station mentioned in the order is determinative for compliance with delivery dates and periods, or that it is successfully accepted if such has been contractually arranged or legally stipulated.
2. If the supplier comes to the realization that he will be unable to adhere to the dates or periods, he shall notify us without delay in writing, stating the causes and the estimated delay.
3. In the case of delayed delivery of the agent, the client has the right to require all-inclusive delay claims in the amount of 1% of the value of goods delivered per completed week, however not more than 10%. The client reserves the right to assert further legal claims in place of the all-inclusive delay claims, in particular cancellation of the contract or compensation for loss suffered because of nonobservance. We will only recognize partial deliveries and deliveries ahead of schedule in particular cases or if this has been expressly arranged in writing. Otherwise we have the right to return the delivery at the cost of the supplier. Even should we accept such deliveries, we are not obligated to make early payments.
4. The agent can appeal to the absence of necessary documents to be delivered by the client only when he has not received these documents within a proper time period despite written reminders.
5. If a contractual penalty is arranged and incurred, we have the right to enforce this up until final payment.

VII. Transfer of the Risk, Commercial Investigation and Notice of Defects

1. The transportation shall occur at the cost and risk of the agent. When the delivery arrives at the receiving station, the risk is transferred to us; if acceptance has been arranged or is legally stipulated, this occurs as of acceptance.
2. We will inspect the delivery upon receipt of the examination and notice of non-conformity, and we will immediately report any visible defects in writing as soon as they are determined in accordance with conditions of an orderly course of business, but at the latest within five business days after we have received the delivery. Defects not visible during a rough incoming goods inspection in accordance with reception inspection can be protested within five business days after identification. The same applies to hidden defects.



VIII. Warranty, Liability for Defects

1. The supplier must ensure compliance with the warranties assumed by him and make certain that the deliveries or services are free of defects. In particular, they must also comply with the relevant public law provisions, guidelines and regulations of public authorities and professional organizations.
2. For defects of quality and defects in title, the warranty period lasts three years, unless otherwise expressly arranged. This also applies to multi-shift operations. In particular, we reserve the right to require from the supplier, at our choice, the removal of the defect or delivery/re-manufacturing. You shall also bear all expenses in connection with defect identification and removal, including those that arise from us, particularly any costs of investigation, assembly/disassembly costs, and costs arising from transportation, shipping and handling, labor, and materials. You are also to carry out subsequent improvement and new deliveries, if needs be in multi-shift or overtime/holiday operations if this is reasonable for you and is judged necessary by us due to current urgent operational reasons. The legally stipulated right to damage compensation, damage compensation in place of the service, or the assertion of warranty claims remains reserved.
3. In the case of the risk of disproportionately high damages or other urgent matters, we have the right to conduct defect removal at the cost of the supplier when we have unsuccessfully tried to contact the supplier. This does not release us from immediately informing the supplier of such activities.
4. The limitation period for claims for damages is 36 months, to the extent that a longer period has not been legally stipulated. The period begins to be in force with transfer of risk but is suspended during negotiations of a defect or recommences to be in force when the supplier identifies a defect.

IX. Product Liability, Indemnification from Claims of Third Parties, Insurance

1. Should there be claims made against us out of product liability regulation due to a defective product, we have the right to pass on compensated damages to the supplier and to be indemnified from claims to damage compensation from third parties if the fault lies within the supplier's scope of responsibility.
2. The supplier shall compensate for measures which we carry out for the prevention of product liability damages in such cases in an appropriate and necessary scope. We will inform him of the contents and scope of such measures, particularly if a product recall is to be carried out. Other legal claims to which we are entitled shall remain unaffected.
3. The supplier agrees to insure himself against all pertinent risks from product liability to a sufficient extent.

X. Tools

1. The client reserves the right to ownership of supplied tools; the agent is obligated to utilize the tools solely for the production of the goods ordered by the client. The agent is obligated to insure at replacement value the tools belonging to the client at his own cost against damages resulting from fire, water, and theft. At the same time, the agent shall assign all claims for indemnification from this insurance to the client; the client herewith accepts the assignment. The agent is obligated to carry out in good time and at his own cost the maintenance and inspection operations becoming necessary for the client's tools. The client shall immediately report any accidents; should he culpably neglect to do so, claims for damages shall remain unaffected.

XI. Industrial Property Rights

1. The supplier owes deliveries or services free from third parties' property rights, in particular for the contractually stipulated purposes of use.
2. The supplier shall indemnify us from third parties' claims due to infringements of industrial property rights resulting herefrom, and shall compensate us for all expenses arising because of an availment through third parties, when these are based on a culpable neglect of duty by him or his assistants. However, we will make no promise or compromise or make other arrangements with the claimant without agreement.
3. The limitation period for claims consisting of an infringement of industrial property rights against the supplier amounts to five years, as of delivery or acceptance, if such has been legally stipulated or arranged.

XII. Retention of Title, Provisions

1. We object to title retention regulations and declarations of the the supplier, which exceed the basic title retention.
2. Provisions which we cede to the supplier remain in our ownership, like the tools, drawings or other documents ceded to the supplier in connection with the conclusion or implementation of the contract. The tools provided to the supplier are to be used exclusively for the production of the supplies to be made for us.
3. The processing or alteration of provisions by the supplier is carried out for us. If the provisions are processed in this connection with other goods, we acquire joint ownership of a newly emerging item proportional to the value of our provisions to the other processed property at the time of processing. When provisions are inseparably mixed with other property not belonging to us, we acquire joint ownership of the new item proportional to the provisions to the other property at the time of processing. If the mixture leads to the supplier's property being viewed as the main item in comparison to our provisions, the supplier shall assign joint ownership of the new item to us proportionately and shall store it for us.

XIII. Nondisclosure

1. The supplier is obligated to keep secret all images, drawings, calculations, documents and other information which has been provide to him, in the event that they are not generally known or are not publicly accessible. He shall only disclose them or pass them on to third parties with our express written consent.

XIV. Notice of Termination

1. The client may terminate the order of supplies (§ 433 BGB) for good cause at any time up until the supplies have been delivered. Good cause exists particularly when the interest of production does not apply for the client as a result of sovereign decisions, bankruptcy has been filed on behalf of the agent, the conditions for filing of bankruptcy exist, or the agent does not meet his obligation for subsequent improvement of defective service within a sufficient time period set in writing.

XV. Place of Delivery, Choice of Law, Venue

1. The place of delivery for the obligations of the supplier is the mailing address referred to in the order.
2. The legislation of the Federal Republic of Germany shall apply, to the exclusion of the UN Convention on Contracts for the International Sale of Goods from 04.11.1980 (CISG; UN Sales Law).
3. The place of venue is the court of justice responsible for our business location in Schwabach. However, we also reserve the right to choose to file suit against the supplier at his general court of jurisdiction.

XVI. Final Provisions

1. If individual provisions of this contract should prove to be or become entirely or partly inoperative, the validity of the residual provisions shall remain unaffected.

