

Terms and Conditions of Purchase 07/2002

I. Application

Our Terms and Conditions of Purchase apply exclusively. Terms and conditions of the supplier conflicting with or deviating from our Terms and Conditions of Purchase are not accepted unless we expressly agreed to them in writing. Our Terms and Conditions of Purchase also apply if we pay or accept the supplier's delivery without any reservations even if we are aware of conflicting or deviating supplier's terms and conditions.

II. Conclusion of the Contract

Orders, contracts and order releases as well as modifications and supplements thereto must be placed and made in writing. Orders and order releases can also be done by remote data transmission or facsimile transmission.

Oral agreements before or during conclusion of a contract must be confirmed by us in writing to become effective. Sect. I, para. 2 remains unchanged.

III. Prices

The prices agreed upon are fixed prices, including all ancillary expenses. However, if the Contractor reduces its prices by the delivery date, it is agreed that the lowest price between conclusion of contract and delivery date applies.

IV. Obligation to Deliver

Agreed or stated delivery dates are binding for the contractor; they start with the date of our order. Punctual compliance with the delivery dates is determined by the date of receipt of the goods by us. In case of delayed delivery, we are entitled to claim lump-sum damages of 0.5 % of the delivery value for every full week, but only up to 5%; further provisions of statute remain reserved. The supplier has the right to prove to us that no or significantly lower damage has resulted as a consequence of the delayed delivery.

V. Shipping

Shipping is at the cost and risk of the contractor.

VI. Payment

Unless otherwise agreed in writing, we pay the purchasing price until the end of the month following the month of delivery with a 3% discount or within 60 days after receipt of the invoice and goods, or in case of sampling after approval by the delivery control.

VII. Retention and set-off

To claim right of retention against our claims and the offsetting with counterclaims is only permitted if the counterclaim is undisputed or established by law.

VIII. Claims Based on Defects

1. For cast iron parts, the supplier guarantees the impermeability to gas of these parts.

2. Acceptance is effected subject to the reservation of an examination for faultlessness, in particular also including accuracy, completeness and suitability. We are entitled to inspect the delivery item, insofar and as soon as this is pertinent in the ordinary course of business. We will give notice of any defects found without undue delay after their discovery. To this extent the supplier waives the objection to delayed notification of defects.

3. The provisions of statute relating to defects as to quality and defects of title apply except insofar as otherwise provided here in below.

4. In principle we have the right to select the type of supplementary performance. The supplier has the right to refuse the type of supplementary performance chosen by us subject to the provisions of § 439 para. 2 BGB.

5. In the event that the supplier does not commence rectifying the defect immediately after our request to remedy it, in urgent cases, especially to ward off acute danger or to prevent greater damage, we are entitled to undertake such rectification ourselves or to have it undertaken by a third party at the expense of the supplier. The limitation period for claims based on defects is 36 months, unless the item has been used in a building construction in accordance with its customary use and caused the defectiveness thereof. The limitation period for claims commences when the item is delivered, or if it has to be installed into a machine, after delivery of the machine to our customer.

6. In case of defects of title, the supplier shall also hold us harmless from any third party claims possibly existing. With regard to defects of title, a limitation period of 10 years applies.

7. For parts of the delivery that are repaired within the statute of limitations of our claim, the statute of limitations shall start to run anew as soon as the supplier has fulfilled our claims for supplementary performance completely.

8. Should we incur expenses as a result of the defective delivery of the delivery item, such costs shall be borne by the supplier.

9. If we take back products produced and/or sold by ourselves as a consequence of the defect of the delivery item supplied by the supplier or if because of this the purchase price to us was reduced or if there was a claim against us in some other way because of this, we reserve the right of recourse to the supplier, in the process of which there is no need for an otherwise necessary setting of a limit of our rights regarding the defects.

10. We are entitled to demand compensation from the supplier for the expenditures which we will be required to pay in relation to our customers on the grounds that our customers are entitled to claim indemnification of costs of the expenditures necessary for the purpose of the subsequent fulfillment.

11. Regardless of the provision in section 6, the expiry of the limitation period in the cases of sections 9 and 10 comes into effect at the earliest two months after the date at which we have fulfilled the claims of our customer against us, at the latest, however, five years after the delivery by the contractor.

12. If a defect in quality appears within 6 months of the transfer of risk, it is assumed that the defect was already present at the time of the transfer of risk, unless this supposition is incompatible with the type of the object or the defect.

13. In the event a product liability claim is asserted against us, the supplier is obliged to hold us harmless from such claims if and to the extent the damage was caused by a defect in the product supplied by the supplier. In cases of liability based on fault, this only applies, however, if the supplier is at fault. Insofar as the cause of the damage falls within the area of responsibility of the supplier, he has to bear the burden of proof.

In these cases the supplier assumes all costs and expenses, including the costs of any legal action or product recall. In all other respects the provisions of statute shall apply. The supplier is obliged to maintain a product liability insurance with sufficient coverage.

IX. Reservation of Proprietary Rights

Material that we supply for the performance of our orders shall remain our property. The materials are processed on our behalf. If our retained goods are mixed or processed with items that we don't own, we retain co-ownership of the new products in proportion to the value of our item and the other processed or mixed goods at the time of processing or mixing.

X. Final Provisions

1. The place of performance for all deliveries, performances and payments is 72636 Frickenhausen.

2. To the extent permitted by law, Nürtingen is agreed on as the venue for all legal disputes. We further have the right to take legal action at a court with jurisdiction over the registered office of the contractor.

3. The contractual relationships shall be governed exclusively by German law, unless otherwise determined by mandatory legal regulations. Uniform laws on the international sales of goods do not apply.

4. Should a regulation of these purchasing conditions be or become void, the validity of the remaining parts of these conditions remains unaffected.