

# General Terms and Conditions of Purchase PFEIFER DRAKO DRAHTSEILWERK GMBH

## § 1 Application of the General Terms and Conditions of Purchase

1. Our Terms and Conditions of Purchase apply exclusively to all – including future – contracts with contractors, legal entities under public law and special funds under public law (hereinafter seller), for deliveries and other services.
2. The General Terms and Conditions of Purchase apply in particular to contracts for the sale and/or delivery of movables (also referred to subsequently as “goods”), irrespective of whether the seller manufactures the goods personally or procures them from external suppliers (sections 433, 651 of the German Civil Code – BGB). The relevant version of the General Terms and Conditions of Purchase shall also apply to future contracts or to the sale and/or delivery of movables with the same seller, without us being required to refer to them separately in each individual case.
3. Any conflicting or additional terms and conditions of the seller are hereby expressly countered. These will also not be recognised where they were not expressly countered again following receipt, the delivery was accepted and/or the goods paid for. They shall only apply if we declare our agreement to them or to a part of them expressly in writing. Where conflicting general terms and conditions correlate then the parts that have been agreed shall apply. Moreover, those parts of our Terms and Conditions of Purchase which are accompanied by non-conflicting provisions of the seller's general terms and conditions shall be considered to have been agreed. Apart from this such provisions of the seller's general terms and conditions which do not completely agree with our general terms and conditions shall not form a part of the contract. Optional law shall apply in all other cases unless the partners to the contract have made a different agreement in an individual case.
4. The conclusion of a contract shall not fail on account of general terms and conditions that conflict with each other. Each provision of these terms and provisions shall be valid on its own.

## § 2 Quote of the Seller, Confidentiality

1. In the free quote provided the seller must comply exactly with the specification and the wording of the request. An express reference shall be required for any variations.
2. We reserve the ownership and copyright to any images, designs, calculations, moulds, steel moulds and tools that are manufactured on account of our order and/or planning, as well as to any documentation from our requests; these may not be made accessible to third parties and must be kept confidential. Any disclosure to third parties requires our express written consent. The documentation must be used exclusively for the manufacture based on our order; once the order is processed it must be returned without being requested. The drawing up of quotes shall be free of charge and non-binding upon us. Tools and moulds of any kind whatsoever must be stored in such a way that any instances of theft, damage or destruction are not possible.

## § 3 Order of the Purchaser

1. Any orders, oral side agreements to the order, agreements and statements from our employees will only be binding upon us with our written confirmation. This will also apply to subsequent amendments and additions.
2. The seller must advise us immediately in writing of any changes or extensions to the scope of delivery/service which turn out to be required upon execution. These require our prior written consent.
3. The requirement for the written form is also met with transmission by way of electronic data transfer.
4. The order must be confirmed immediately in writing, and within a period of 3 working days from the date of our order at the latest, or must in particular be completed by sending the goods without reservation (acceptance).
5. The periods stated are considered periods of time within the meaning of section 148 BGB, meaning that in the event that a deadline is not met then no contract will come into existence without a new written confirmation from us. We are under no obligation to counter separately any acceptance letters that are received late by us.
6. Similarly no contract will come into existence without a new written confirmation from us where the acceptance, whether made on time or not, differs from our order contents on any points whatsoever. No separate rejection on our part shall be required in this event, even in an ongoing business relationship. This clause does not affect the use of own general terms and conditions by the seller, the legal consequences of which are governed by section 1 (3) of these terms and conditions of purchase.

## § 4 Execution, Safety and Quality

1. The delivery must feature the specifications agreed, taking recognised technological regulations and the relevant applicable statutory and official rules and our own operational regulations and rules into account. Work equipment with CE marking should preferably be delivered. If no certification mark has been issued then evidence must be provided upon our request that the rules stated above have been complied with.

2. In the event that the seller delivers materials that are hazardous within the meaning of the German Hazardous Substances Ordinance (GefStoffV), then the seller will be under an obligation to provide us with the EU material safety data sheet without being requested (section 14 GefStoffV). Where chemical materials are supplied which fall within the scope of REACH, the seller will submit the material safety data sheet to us without being requested, from which the registration number and, where appropriate, any usage limitations or information on the authorisation requirement and the “identified usages” ensue.

3. The seller must bring the quality of the products to be supplied to us in line with the latest technology and point out any options for improvement and technical change options.

## § 5. Delivery time, Time of Service Performance

1. The deadlines provided in the order for delivery or performance of a service are binding. Unless otherwise agreed the goods ordered must be received at our premises or at the receiving office or construction site stated by the deadline provided in the order. Any deliveries made before the agreed delivery deadline may be rejected by us.
2. The seller shall be under an obligation to inform us immediately in writing in the event that circumstances arise or become known to it which mean that the agreed deadline cannot be met. The obligation to meet the agreed deadlines remains unaffected by this.
3. Any deliveries outside of normal business hours will require our express written approval. Any damage resulting from non-compliance with this rule along with the risk of accidental destruction or of accidental deterioration in the period until the start of the next delivery time shall be borne by the seller alone. Times for delivery are: 06:00 until 13:00 only.
4. In the event that the seller does not provide its service or does not provide it within the agreed delivery time or is in default, then our rights – in particular the rights to rescission and compensation – shall be determined in accordance with the statutory rules. The regulations in section 5 (5) remain unaffected.
5. In the event that the seller is in default then, in addition to further statutory claims, we may demand lump-sum damages of 0.3 percent of the net price for the damage caused to us by the delay for each working day, up to a total, however, of not more than 5 percent of the net price of the goods delivered late. We reserve the right to provide evidence that greater damage was incurred by us. The seller reserves the right to provide evidence that no damage at all or significantly less damage was incurred by us.

## § 6 Service, Delivery, Transfer of Risk, Delay in Accepting Performance or Delivery

1. The seller is not entitled to have the service owed by it provided by a third party (e.g. sub-contractor) without our prior written consent. The seller shall bear the procurement risk for its services unless the purchase concerned is a custom-made item.
2. Goods shall be delivered free within Germany to the location provided in the order. If the place of destination is not provided and where nothing else has been agreed then delivery must be made to our registered office in Memmingen. The relevant place of destination shall also be the place of fulfilment (obligation to be performed at the creditor's place of business).
3. A delivery note must be enclosed with the delivery with information on the date (issue and shipment), delivery contents (item number and quantity) along with our order number. If the delivery note is missing or is incomplete then we shall not be responsible for any processing and payment delays resulting from this. A corresponding dispatch note with the same content must be sent to us separately from the delivery note.
4. The risk of accidental destruction and of accidental deterioration of the item shall pass to us upon delivery at the place of fulfilment. Where acceptance of the goods is agreed then this shall be decisive for the transfer of risk. In other respects the statutory rules of the law related to contracts for work and services shall also apply accordingly for any acceptance. Delivery and/or acceptance shall be deemed to have taken place if we are in default in providing our acceptance.
5. The statutory rules shall apply to instances where we are in default in providing our acceptance. The seller must also expressly supply us with a service where a certain or ascertainable time is agreed for an action or cooperation on our part (e.g. assignment of material). Where we are in default in providing our acceptance then the seller may demand compensation for its additional expenditure in accordance with the statutory rules (section 304 BGB). Where the contract relates to an item to be manufactured by the seller which is unwarrantable (custom-made item) then the seller shall only be entitled to further rights if we are under an obligation to cooperate and are responsible for the cooperation not occurring.
6. The seller shall in principle only be entitled to make partial deliveries or provide partial services with our written consent.

## **§ 7 Price and payment terms**

1. The price provided in the order is binding. All prices shall be understood to be inclusive of statutory VAT if this is not stated separately.
2. The price includes all services and supplementary services of the seller (e.g. assembly, installation) along with all ancillary costs (e.g. proper packaging, transportation costs including any potential transportation and liability insurance, customs duties) unless otherwise agreed in an individual case. The seller must take back any packaging material following a request by us.
3. The agreed price shall be due for payment within 30 calendar days following complete delivery and provision of the service, including any agreed acceptance that may be agreed, along with receipt of an invoice in a proper form. Where we make the payment within 14 calendar days then the seller will grant us a discount of 3 percent of the net amount of the invoice.
4. We shall not owe any interest after the due date. The seller's claim to payment of default interest remains unaffected. The statutory rules shall apply to instances where we are in default. A reminder from the seller will, however, be required in each case.
5. To the extent permitted by law we shall be entitled to rights of offset and retention along with the defence of non-performance of contract. In particular we shall be entitled to withhold payments due insofar as we still have claims against the seller for incomplete or defective services.
6. The seller shall have a right of offset or retention only against undisputed counterclaims or those ascertained by force of law.
7. Invoices must be sent in two copies to us immediately upon delivery. They must contain the order number, item name, quantities and individual prices. Any supplements which are relevant for the overall price, such as surcharges for example, must be stated separately. All accounting documentation (parts lists, work performance records, surveys, etc.) must be attached. Section 14 of the German VAT Act (UStG) shall also apply in addition to this. Any payment delays which stem from a breach of this obligation shall not constitute a default on our part.

## **§ 8 Defective Delivery**

1. Unless otherwise agreed subsequently the statutory rules shall apply to our rights in the event of material defects or defects of title in the goods, including incorrect and short deliveries along with improper assembly, defective assembly, operating or service instructions, and in the event of breaches of obligation by the seller.
2. The seller shall in particular be liable in accordance with the statutory rules for the fact the goods have the agreed properties when the risk is transferred. Those product descriptions which – in particular through being named or referenced in our order – are a subject matter of the relevant contract and were included in the contract in the same way as these terms and conditions of purchase shall at all events be considered as an agreement on the properties. Whether the product description comes from us, the seller or the manufacturer is immaterial.
3. By way of derogation from section 442 sub-section 1 sentence 2 BGB we shall also be unconditionally entitled to claims for defects where we remained unaware of the defect on contract conclusion as a consequence of gross negligence.
4. The statutory rules (sections 377, 381 of the German Commercial Code (HGB)) shall apply to the commercial duties to examine and to give notice of defects, with the following proviso: Our duty to examine shall be limited to defects that are openly visible during our examination of goods received with an external assessment including of the delivery documents as well as during our quality inspections in the sample testing process. Where an acceptance has been agreed then there shall be no duty to examine. In all other respects it will depend upon the extent to which it is possible to carry out an examination, taking account of the circumstances in the individual case in the proper course of business. Our duty to provide notice of defects which are discovered later remains unaffected. At all events our notification of defects shall be considered to be immediate and on time where it is submitted to the seller within 7 working days.
5. The seller will also be responsible for the costs incurred by it in checking and making subsequent improvements where it turns out that no defect was in fact present. Our liability for damages in the event of an unjustified request to remedy defects remains unaffected; to this extent we are only liable, however, where we knowingly or through gross negligence did not recognise that no defect was present.
6. In the event that the seller does not fulfil its obligation of supplementary performance – through our selection of a remedy of the defect (subsequent improvement) or of delivery of a fault-free item (replacement delivery) – within a reasonable period set by us, then we may remedy the defect ourselves and demand compensation from the seller for the expenditure required for this or an advance payment. If the supplementary performance provided by the seller has failed or if this is unreasonable for us (e.g. on account of a particular urgency, danger to operational safety or the threat of disproportionate damage occurring) then no period needs to be set; the seller must be informed immediately, and before wherever possible.

7. In all other respects we shall be entitled under the statutory rules to a reduction in the purchase price or to withdraw from the contract in the event of a material defect or defect of title. Moreover we shall be entitled to compensation and reimbursement of expenses under the statutory rules.

## **§ 9 Liability of the Manufacturer**

1. In the event that the seller is responsible for product damage, it must release us from claims from third parties to the extent that the cause resides within its domain and organisational area and that the seller is personally liable in relation to the third parties.
2. As part of its obligation to release us from third-party claims the seller must reimburse any expenditure in accordance with sections 683, 670 BGB which arise in connection with a claim from a third party including product recalls implemented by us. We will inform the seller of the content and scope of any product recalls where this is possible and reasonable and will provide it with an opportunity to make a response. Further statutory claims remain unaffected.
3. The seller must take out and maintain a product liability insurance policy with a flat-rate policy value of at least 3 million euros per personal injury/material damage.

## **§ 10 Limitation of Actions**

1. The reciprocal claims of the parties to the contract shall become statute-barred unless otherwise agreed subsequently.
2. By way of derogation from section 438 sub-section 1 (3) BGB the general limitation period for claims for defects is 3 years from the date of the transfer of risk. Once an acceptance is agreed the limitation period shall begin with the actual acceptance. The 3-year limitation period will also apply accordingly to claims from defects of title, with the statutory limitation period for tangible claims for return to a third party (section 438 sub-section 1 (1) BGB) remaining unaffected. Moreover, claims from defects in title shall not become statute-barred under any circumstances, as long as the third party is still able to assert the right against us, in particular for lack of limitation.
3. The limitation periods under the law of the sale of goods including the extension stated previously will apply to all contractual claims for defects to the extent permitted by law. Where we are also entitled to non-contractual claims for compensation on account of a defect then the regular statutory limitation will apply (sections 195, 199 BGB), unless application of the limitation periods under the law of the sale of goods would lead to a longer limitation period in an individual case.

## **§ 11 Partial Invalidity**

In the event that individual contractual terms and conditions are invalid then the remaining provisions will remain valid in full. A regulation which, to the extent that is legally possible, comes closest to the sense and purpose of the invalid clause will apply in place of the invalid provisions taking account of the economic determination of the aims.

## **§ 12 Choice of Law and Place of Jurisdiction**

1. The law of the Federal Republic of Germany is applicable to these terms and conditions of purchase and to all legal relations between us and the seller, to the exclusion of all international and supranational (contract) legal orders, in particular of the UN Convention on Contracts for the International Sale of Goods. The prerequisites for and impact of reservation of title are subject to the law at the relevant location of the item, insofar as the choice of law made in favour of German Law is inadmissible or invalid.
2. If the seller is a trader within the meaning of the German Commercial Code, or a legal entity under public law or a special fund under public law, then our place of business in Mülheim an der Ruhr with competence of the Landgericht Duisburg (regional court in Duisburg) is the exclusive, including international, place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. We will be entitled, however, to bring a claim at the place where the supplier is under an obligation to fulfil its part of the contract.