

## General Purchasing Conditions

### I. General

- The present general purchasing conditions (GPC) are exclusively valid for all current and future orders of Mühlbauer Holding AG and all their associated companies (art. 15 German Corporation Law). A current version of the GPC is available on [www.muehlbauer.de](http://www.muehlbauer.de). The GPC apply only if the vendor is an entrepreneur (art. 14 German Civil Code), a legal entity under public law or public separate assets.
- The GPC apply especially for contracts concerning the sale and/or delivery of movable goods ("goods") regardless whether the vendor manufactures the goods himself or purchases them from suppliers (articles 433, 651 German Civil Code). Unless otherwise agreed, the GPC are valid in the version that is applicable at the moment of the buyer's order or, in any case, in the latest version that he received in writing as a framework agreement also for similar future contracts, without us having to point them out again in every individual case.
- These GPC apply exclusively. Divergent, contrary or supplementary terms and conditions of the vendor shall become a part of the contract only if and insofar as we have explicitly accepted them in writing. This requirement of consent applies in every case, also for instance if we accept the vendor's deliveries without reservation while aware of his terms and conditions.
- Orders only become binding for us if we have produced them in written form. We do not recognize verbal subsidiary agreements. In particular, orders, changes or additions to orders via telephone shall only become binding if we have confirmed them in writing.
- Individual agreements concluded with the vendor in the particular case (including subsidiary agreements, supplements and changes) precede these GPC in any case. A written contract or our written confirmation is authoritative for the content of such agreements, subject to proof of the contrary.
- Legally relevant declarations and notifications of the vendor regarding the contract (e.g. deadlines, warning, withdrawal) must be submitted in writing (e.g. letter, e-mail, fax). Legal formal regulations and further evidence, especially in case of doubts regarding the legitimation of the declarant, remain unaffected.
- Notices about the validity of legal provisions are only for clarification. Even without such clarification, the legal provisions shall apply to the extent to which they are not directly changed or explicitly excluded by these GPC.

### II. Offers, conclusion of contracts, extent of orders and prices

- Offers and cost estimates generally are to be submitted free of charge, unless a contrary agreement has been made.
- Our order shall be binding no earlier than upon written submission or confirmation. The vendor must inform us about obvious errors (e.g. typing or calculating errors) and any incomplete information in our order including the order documents before accepting the order, so we can correct or complete it; otherwise the contract is considered as not concluded.
- Silence on offers, requests or other statements from our suppliers only means acceptance if this has been agreed expressly in writing.
- After receipt of the order by the supplier we expect an unconditional order confirmation in writing within 4 working days which mentions our order number and article number or an unconditional shipment of the goods (receipt). A delayed receipt is considered as a new offer and requires our acceptance.
- We reserve the right to reduce or increase the amount of ordered items or to make adaptations to the model type of machinery, in particular in respect to new technical developments as long as this means an improvement for us, as well as to require a certain time and place of delivery or setting up. If, as a result of this procedure, cost increases and/or delivery delays are proven to occur, then an appropriate compensation must be negotiated.
- The prices listed in our order are ceiling prices and remain binding even when price increases occur in the meantime. However, if the vendor reduces his prices by the delivery deadline, this reduction must be passed on to us.
- Unless otherwise agreed for the particular case, the price includes all services and ancillary services of the vendor (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging, transport costs including possible insurance for transport and liability).
- If the ordered goods fall under export control or other restrictions to marketability according to German law, the vendor has to inform us in writing prior to conclusion of the contract. If this information is not provided, we reserve the right to withdraw from the contract.
- For articles that are ordered for the first time we shall receive automatically and without further request a long-term supplier's declaration or information on the country of origin and customs code.

### III. Deliveries and terms of delivery

- The delivery date stated in our order is binding. The vendor is obliged to inform us immediately and in written form if situations occur (or if he becomes aware of factors), which lead to a delivery delay. Furthermore he has to inform us about the new binding delivery date.
- If the vendor does not honor the agreed delivery date of movable goods or if the manufacturing and the setting up as well as the putting into

operation of immovable objects such as machines to be permanently fixed, complete machinery and industrial facilities and other devices is not completed within the deadline, then the vendor shall charge, per full calendar week of delay, a financial penalty of 1% of the net order amount, but at maximum 5% of the order amount. In addition to this, the vendor is liable to pay for damages that his delay caused to us through a production shortfall, refused orders, and a loss of wages occurring on our side, if such damages exceed the penalty. Furthermore, we shall be entitled to immediately withdraw from a contract if deadlines are not met. An acceptance of goods delivered late does not constitute a waiver of possible compensation claims for damages.

- Partial, short- or over-deliveries are not admissible unless a contrary agreement has been made. In individual cases, however, such deliveries can be accepted.
- Shipping documents have to be included in every delivery. The documents must contain our order number, our article number for each item, the material designation and the weight of the shipment.
- In case express transport was necessary to meet the delivery date, the arising additional costs have to be borne by the vendor.
- The delivery of additional agreed documents such as test reports, material quality certificates or the like is required for the delivery to be considered as complete.
- Unless personal performance has been agreed, the vendor shall be entitled to make use of third parties (e.g. subcontractors) for the performance of its contractual obligations, unless there is an important reason to the contrary, in particular if the third party, when viewed objectively, does not offer the guarantee of performance in accordance with the contract. The vendor bears the risk of procurement for his services, unless otherwise agreed in the specific case (e.g. limitation to stocks).

### IV. Dispatch and risk taking

- The vendor is liable for the strict conformation to the regulations pertaining to the dispatch which have been given to him. We retain the right to refuse to accept deliveries, if we have not received proper dispatch and shipping documents on the day of delivery and we shall not be in default of acceptance due to that. The costs of the justified refusal to accept the goods shall be borne by the vendor.
- The vendor carries the risk of an accidental loss or deterioration until the point of delivery to us or acceptance, unless explicitly agreed otherwise in writing.
- The deliveries are deemed free of transportation costs until the dispatch address including packaging, unless, in single cases, another written agreement has been made. We only return packaging materials or bear packaging costs if we explicitly confirm this in written form or if it is legally required.
- The vendor only fulfills his delivery obligations after the delivery of the goods or performance of the work or acceptance as long as there has been no other written agreement. The values determined at our particular site are authoritative for amounts and weights.

### V. Manufacturing orders

- For work involving installation, maintenance and additional services, the following shall apply: The vendor is responsible, during the performance of all work carried out both by himself and by his agents, for the conformation to accident, fire prevention and occupational safety regulations, in particular those which are valid in our production plants.
- The vendor shall be held liable for any damages caused either by himself or by his agents at our site. He shall exempt us from any claims for compensation of third persons, also from instructions of supervisory authorities etc., which are made against us in the context of the contractually agreed delivery or service. Upon our request, he must prove that he is able to cover the costs for this damage by a sufficient liability insurance.
- The vendor and his agents themselves are responsible for the care of the safe storage of their property brought to our facilities. In this regard we do not assume any warranty.

### VI. Patents and trade mark rights

- The vendor guarantees that the products delivered by him do not infringe any patent rights or other industrial property rights of third parties.
- The vendor exempts us from any obligation, liability, loss, claims for compensation including costs and disbursements which result from claims or litigation due to the infringement of patents or other industrial property rights. In the case that such claims are made against us, the vendor shall assume our defense in court at his own cost and shall exempt us from any claims made between these parties, in which ever form, by third persons. In the case that such claims are made against us, we shall notify the vendor immediately in writing and provide him with the necessary information.

### VII. Sketches and models

- Sketches, models, documentation, software, etc. which we provide or pay for the execution of an order, remain or become our property. The vendor



shall be held liable for the loss or damage or for any misuse until they are duly and completely returned.

2. After completion of a job task those objects shall be returned to us without further request.

#### **VIII. Billing and payment**

1. After successful and contractual delivery of the ordered goods or provision of the agreed service we shall receive an invoice from the vendor. For processing purposes the invoice has to show our order number, the designation of the invoiced items as well as our vendor number. Invoices without this information will be considered as not received, because they cannot be processed.
2. Unless otherwise indicated in the order or contractually agreed, the agreed price is due for payment within 30 calendar days subsequent to complete delivery and service provision (including the agreed acceptance, if applicable) and receipt of a proper invoice. If we pay within 14 calendar days after receipt of the invoice, the vendor shall grant us a 3% cash discount on the net amount of the invoice. In case of bank transfer, payment is considered as done in time if our bank receives our transfer order before expiry of the payment deadline; we are not responsible for any delays caused by the banks involved in the payment procedure.
3. We do not owe any due date interests. Regarding payment delay, the legal regulations shall apply.
4. We shall be entitled to rights of set-off and retention as well as the defense of non-performance of the contract to the extent provided by law. In particular, we shall be entitled to withhold payments due as long as we are still entitled to claims against the vendor arising from incomplete or defective performance.
5. The vendor shall not have the right to offset against our claims, unless for counterclaims that we do not dispute or that have been established against us as final and absolute or for claims arising from the same contractual relationship.

#### **IX. Non-disclosure and reservation of title**

1. We reserve property rights and copyrights for images, plans, drawings, calculations, executive instructions, product descriptions and other documentation. Such documentation must be used exclusively for the contractual services and must be returned to us after contract fulfillment. This documentation must not be disclosed to any third parties, including after contract termination. The obligation to secrecy shall only expire when and insofar as the knowledge contained in this documentation has become common knowledge. Special non-disclosure agreements and statutory regulations on protection of classified information shall remain unaffected.
2. The above provision shall also apply to substances and materials (e.g. software, finished and semi-finished products) as well as tools, models, samples and other items that we provide to the vendor for production. As long as these items are not processed, they must be kept separately and insured to an appropriate extent against destruction and loss at the expense of the vendor.
3. Processing, mixing or combining (further processing) of provided items shall be carried out for us by the vendor. The same applies if the delivered goods are further processed by us, so that we are considered the manufacturer and, at the latest after further processing, become the owner of the product in accordance with the legal provisions.
4. The transfer of ownership of the goods must be unconditional and regardless of payment of the price. However, if we accept a particular offer of the vendor where payment of the purchase price is a condition, the retention of title of the vendor expires at the latest when the purchase price for the delivered goods is paid. In the orderly business process, we remain entitled to resell the goods before paying the purchase price, which shall imply assignment of accounts receivable in advance (alternatively the simple retention of title shall apply and be prolonged for resale). In any case, all other forms of retention of title are excluded, especially the retention of title extended, forwarded or prolonged for further processing.

#### **X. Defective delivery**

1. In accordance with the statutory provisions, the vendor shall be liable in particular for ensuring that the goods have the agreed quality at the time of transfer of risk to us. In any case, those product descriptions which - in particular by designation or reference in our order - are the subject matter of the respective contract or have been included in the contract in the same way as these GPC shall be deemed to be an agreement on the quality. It makes no difference whether the product description comes from us, the vendor or the manufacturer. The subjects of the contract must always be compliant with the laws applicable in Germany, especially regarding equipment safety and product liability.
2. If a machine, a device or a complete plant is manufactured and/or installed according to a specifically agreed plan or special request, the vendor shall guarantee that the subject of the contract fulfills the purpose intended by us.
3. The scope of warranty to be provided by the vendor includes the parts produced by his suppliers and the deliveries of the suppliers respectively.
4. Our obligation to investigate and to reprimand for faults does not arise until the delivery/service has been received in our plant. The examination and notification period, which starts at that point in time, is one month for complex cases.

5. Regarding the commercial obligation of examination and notification the legal provisions (art. 377, 381 German Commercial Code) apply, provided that: Our obligation of examination is limited to faults which are clearly visible during external examination of the goods including the delivery documents at the incoming inspection (e.g. transport damages, incorrect or short delivery) or which can be noticed by random sample testing at our quality control. If an acceptance is agreed, there is no obligation of examination. Otherwise it depends on whether an examination is feasible considering the circumstances of the individual case according to regular business procedures. Our obligation to give notice of faults detected later remains unaffected. Irrespective of our obligation of examination our notification of faults shall be considered as immediate and in time if it is submitted within 14 working days from the detection or, in case of obvious faults, from delivery.
6. In the case of immovable objects such as permanently fixed machinery and equipment, an official acceptance from our side is required. We are not obliged to accept them until the machine or the equipment has been correctly installed or set up and is operational.
7. In case of faults, we are entitled to demand from the vendor either rectification or a replacement delivery of parts free of faults. Supplementary performance includes removal of the faulty goods and reinstallation, if the goods were installed integrated in another item according to its intended purpose. The vendor must also bear the costs incurred for examination and supplementary performance (including possible costs for removal and reinstallation) if it turns out that there was no fault. Our liability for compensation in case of unjustified claims for supplementary performance remains unaffected, but we can be held liable in this regard only if we have realized or grossly negligently not realized that there was no fault.
8. If a punctual improvement or replacement delivery is not possible, if it is not successful or reasonable, we can make a claim for compensation and/or withdraw from the contract or demand a price reduction. In the aforementioned cases we are also entitled to have the faults corrected at the expense of the vendor. If a fault is only noticed after further processing, the vendor shall also be liable for the damage arising to us from this fault.
9. Otherwise, in case of a defect of quality or title, we are legally entitled to reduce the purchase price or to withdraw from the contract. Moreover, according to the legal provisions we are eligible for compensation for damages or expenses.

#### **XI. Liability of the manufacturer**

1. To the extent to which the vendor is responsible for a damaged product, he is obligated to exempt us from claims for compensation of third parties upon our first request in so far as the cause originated in his organizational domain and is himself liable to external parties.
2. Within the context of his exemption obligation, the vendor shall reimburse expenses pursuant to articles 683, 670 of the German Civil Code arising from or in connection with a third-party claim including recall actions carried out by us. Concerning the content and extent of the recall measures to be carried out, we shall, as far as possible and reasonable, inform the vendor and give him the opportunity to make a statement. Any other legal claims shall remain unaffected.
3. The supplier commits to taking out a product liability insurance with a lump-sum coverage of at least 10 million EUR per case of damage to persons or property.

#### **XII. Recourse against suppliers**

1. Besides the claims for defects, we are entitled without limitation to our legally determined claims for expenses and recourse within a supply chain (recourse against suppliers according to articles 478, 445a, 445b German Civil Code). We are in particular entitled to claim from the vendor exactly the kind of supplementary performance (rectification or replacement delivery) which we owe to our customer in the individual case. This does not restrict our legal right to choose (art. 439 (1) German Civil Code).
2. Before we recognize or fulfill any claims for defects from our customer (including compensation for expenses according to articles 445a (1), 439 (2), (3), (6) sentence 2, 475 (4) of the German Civil Code), we will inform the vendor, explain the facts and ask for a written statement. If the vendor makes no substantiated statement within an appropriate period and if no amicable solution is achieved, the claims for defects that we actually granted shall be considered as owed to our customer, it rests with the vendor to provide counter evidence.
3. Our claims from supplier recourse shall also apply if the defective goods have been combined with another product, e.g. by mounting, attachment or installation, or further processed in any other way by us, our customer or a third party.

#### **XIII. Statute of limitation**

1. The mutual claims of the contractual parties shall fall under the statute of limitation according to the legal provisions, unless otherwise determined in the following sections.
2. Unlike stated in art. 438 (1) no. 3 of the German Civil Code, the general limitation period shall be 3 years starting from transfer of risk. If an acceptance is agreed, the limitation period shall start at the acceptance. The 3-year limitation period also applies in the same way to claims arising from defects of title, but the legal limitation period for in-rem surrender claims of third parties (art. 438 (1) no. 1 German Civil Code) remains unaffected; moreover, claims resulting from defects of title shall not fall

under the statute of limitation in any case as long as the third party can still - especially for lack of limitation - claim this right against us.

3. The limitation periods of the sales law including the above extension shall apply - in the legal scope - to all contractual claims for defects. If we are also entitled to non-contractual claims for damages due to a fault, the regular statute of limitation (articles 195, 199 German Civil Code) shall apply, unless applying the limitation periods of the sales law would result in a longer limitation period in the particular case.

#### **XIV. Other provisions**

1. We will process the data that we have received from the vendor due to our business relationship in accordance with the legal regulations.
2. The vendor can only assign claims against us to third parties with our written consent; this shall also apply to assignment of claims in the framework of a factoring contract. If claims are assigned without our consent, we are authorized to withdraw from the contract. The same applies if insolvency proceedings against the vendor are initiated or moved for.
3. In case one or several provisions of the conditions mentioned above are or become invalid or unfeasible, the validity of the other provisions of this contract shall remain otherwise unaffected. Such invalid provisions shall be replaced by new provisions which aim at the same degree of economic success. The same applies for handling contractual omissions.
4. As far as provisions have not become an integral part of the contract, the subject matter of contract shall insofar obey the legal regulations.
5. The place of performance is the registered office of our works for which the delivery of work/services is destined.
6. These GPC and the contractual relationship between us and the vendor shall be governed exclusively by German law.
7. If the vendor is a merchant within the meaning of the German Commercial Code, a legal entity under public law or public separate assets, the exclusive - also international - place of jurisdiction for all disputes arising from the contractual relationship shall be Regensburg. The same applies if the vendor is an entrepreneur (art. 14 German Civil Code). However, we shall also be entitled in all cases to bring an action at the place of performance of the delivery obligation pursuant to these GPC or a prior individual agreement or at the general place of jurisdiction of the vendor. Overriding statutory provisions, in particular on exclusive competences, shall remain unaffected.