

General Terms and Conditions of Purchase of PFLITSCH GmbH & Co. KG

1. Scope of application

We place our purchase orders solely on the basis of these General Terms and Conditions of Purchase. Any Terms and Conditions of Purchase with different or deviating provisions from those of the present Terms and Conditions of Purchase shall not apply unless we have explicitly agreed to them in writing. The ordering and acceptance of goods and services does not entail our acceptance or acknowledgment of the General Terms and Conditions of the Supplier.

2. Quotations, documents

2.1 Any quotations drawn up by the Supplier shall, on principle, be submitted in writing or in textual form (by e-mail, fax etc.) and shall be deemed to carry no obligation for remuneration.

2.2 We reserve ourselves any and all rights of property, usage and exploitation with regard to the drawings, plans, pictures, calculations, models, designs and other documentation made available to the Supplier for the purpose of drawing up the quotation. The Supplier shall not be permitted to make them available or accessible to any third parties without our express written approval.

2.3 If such materials are made available in connection with or for the purpose of drawing up a quotation, the Supplier shall only be permitted to use them for the purpose of drawing up a quotation or, respectively, for the purpose of processing the purchase order. They are to be returned to us without our express request if we have not placed a purchase order, or at our request if a purchase order has been placed and processed.

3. Purchase orders

3.1 Purchase orders are only legally binding when placed by us in writing or in textual form (by e-mail, fax etc.). Purchase orders placed orally or by telephone are subject to our subsequent confirmation in writing or in textual form (by e-mail, fax etc.). We may refuse acceptance of and payment for any deliveries which are not backed up by a properly placed purchase order as per the aforementioned requirements. Any uncertainties or questions in connection with any purchase orders must be clarified by way of an enquiry of the Supplier in writing or in textual form (by e-mail, fax etc.).

3.2 The Supplier shall be obliged to confirm any purchase orders accepted in writing or in textual form (by e-mail, fax etc.) within three days.

3.3 In case of any discrepancies between the Supplier's acceptance or confirmation letters and the purchase order, the Supplier shall be obliged to expressly call attention to this fact. In such a case, a contract shall only be deemed to be concluded after our approval in writing or in textual form (by e-mail, fax etc.).

3.4 A purchase order acceptance deviating from the original purchase order shall be deemed to be a new quotation and shall be subject to acceptance by us in writing or in textual form (by e-mail, fax etc.).

3.5 The Supplier may only engage a subcontractor with our prior written approval. In such a case, the Supplier's obligations to us shall remain in full force and effect without any restrictions, with the Supplier being liable for any faults of the subcontractor as it would be for its own faults.

4. Prices, delivery, packaging

4.1 The prices stated within the purchase order shall be binding. For all deliveries, the condition of delivery DAP (Delivered at Place) as per the Incoterms in their 2010 shall be deemed to have been agreed upon unless otherwise expressly agreed between the Parties. The price stated in the order includes all delivery costs as per the agreed Incoterms.

4.2 Any price changes due to costs subsequently incurred shall be excluded regardless of their reason insofar as not expressly agreed otherwise.

4.3 Insofar as we have not stated any prices in the purchase order, the Supplier shall be obliged to state them in its purchase order confirmation. In such a case, a contract shall only be deemed to have been concluded after we have further confirmed the prices in writing or in textual form (by e-mail, fax etc.).

4.4 If prices should have been agreed upon as Ex Works or Ex Works of the Supplier or of any third party in exceptional cases, all costs incurred up to the point of handing over the goods to the transport company, including loading costs and freight charges, shall be for the account of the Supplier.

4.5 The Supplier shall immediately inform us of any delivery that has taken place by means of a delivery advice note. The delivery advice note as well as any other documents and invoices in connection with the processing of the respective purchase order shall state our purchase order number.

4.6 The Supplier shall use environmentally friendly packaging which should be recyclable if possible.

5. Invoice, payment

5.1 Invoices are not to be enclosed with the consignment, but must be submitted stating our order number, order date, delivery note number, article number and drawing number. This also applies to the delivery notes/performance records and dispatch notes to be enclosed. Invoices shall only be deemed to have been issued once they have been received, complete with all details and supporting documents. Incomplete invoices will be rejected and not paid.

5.2 Unless otherwise agreed, payment shall be made after receipt of the goods in accordance with the contract or complete defect-free performance and receipt of the proper and verifiable invoice in accordance with the agreed terms of payment. The date of receipt of the invoice is the date of the digital receipt stamp.

5.3 Invoices are to be sent exclusively in digital form, as an unencrypted PDF file, to our e-mail address eingangsrechnung@pflitsch.de. Invoices sent to other e-mail addresses will not be settled.

6. Appointments, deadlines and contractual penalty

6.1 Any agreed dates and deadlines of delivery shall be binding and shall be calculated as from the day of placing the purchase order. The decisive event for their fulfillment shall be deemed to be the arrival of the delivery at the place of receipt stated in the purchase order or the successful acceptance of the goods or services if the latter has been provided for by contract or by law.

6.2 If the Supplier becomes aware that it cannot adhere to the dates or deadlines, it shall immediately inform us thereof by stating the reasons and the prospective duration of the delay. Acknowledgement of the new date of delivery is subject to our approval in writing or in textual form (by e-mail, fax etc.) and shall not be deemed to have been given either by the Supplier's notification or our lack of response to such notification.

6.3 If the Supplier is in default of delivery we are entitled to specific claims under the law. We are, in particular, entitled to damage compensation in lieu of performance, and we have the right to rescind the contract after a suitable grace period has elapsed without success. Deliveries ahead of time and partial deliveries are only recognized by us in exceptional cases or in case of an express agreement to this effect; otherwise, we shall have the right to return the delivery at the expense of the Supplier. Even if we do accept such deliveries, we are not obliged to make payment ahead of time.

7. Properties - Specifications

7.1 It is mandatory for the purchased item to have all the properties or characteristics specified in the purchase order or in any quality assurance agreements, which are deemed to be agreed properties and characteristics.

7.2 Insofar as we provide the Supplier with drawings, models or other prescriptive materials, such materials alone shall be deemed to be the decisive criteria as to the type, characteristic features and execution of the goods to be delivered.

7.3 In case of serial production to our specifications, production may only start after approval of the specimens by us in writing or in textual form (by e-mail, fax etc.). The Supplier shall be obliged to immediately notify us of any objections it might have to our specifications. In such a case, the production of specimens or other actions in connection with the fulfilment of the contract may not be undertaken until the Parties have reached an agreement concerning this point.

7.4 The goods delivered must be in conformity with the respectively applicable statutory accident prevention provisions, the VDE provisions, any other statutory provisions and regulations as well as with the rules of Generally Accepted Engineering Practice.

7.5 The supplier is obliged to provide comprehensive foreign trade data with regard to the delivered goods. This includes, in particular, the classification of goods in trade statistics, the country of origin of the goods, the labelling and classification of goods subject to export control and, where appropriate, the provision of a certificate of origin or preference document. The supplier is obliged to inform us if the delivered goods are subject to German export control regulations, are listed on the List of Goods or are subject to the Export Administration Regulations (EAR) under US law. Any export declarations made regarding the final recipient shall form an integral part of the supply contract. The supplier must inform us immediately of any changes with respect to the delivered goods that affect foreign trade.

8. Liability for material defects

8.1 The Supplier shall ensure compliance with its warranty undertakings and shall ensure that the goods or services are free from any defects. In particular, such goods and services must be in conformity with the relevant public-law provisions, guidelines and rules issued by public authorities, professional associations and the like.

8.2 In case of any defects we are entitled to the statutory claims in case of defects. In particular, we are entitled to ask the Supplier for removal of the defects or, respectively, delivery or manufacture of new goods or services at our discretion. Any costs arising in connection with subsequent performance shall be borne by the Supplier. We reserve ourselves any statutory rights to damage compensation or damage compensation in lieu of performance, or the right to assert any warranty claims.

8.3 In cases where unreasonably high damage would be imminent or in other cases of special urgency we are entitled to remove the defects ourselves at the cost of the Supplier if we have unsuccessfully tried to contact the Supplier or if trying to do so would not be reasonable due to urgency. This shall not relieve us of our obligation to immediately notify the Supplier of such measures.

8.4 The statute of limitation for claims arising from defects shall be 36 months insofar as a longer period has not been provided for by law. This period shall commence with the transfer of risks but shall be suspended by negotiations concerning a defect or shall recommence when the Supplier acknowledges a defect.

9. Product liability, exemption from third-party claims, insurance, proprietary rights

9.1 Should we be made liable under product liability provisions in connection with any defective products, we shall be entitled to charge the Supplier for any damage incurred by us insofar as the Supplier is responsible for the faults. The Supplier shall indemnify us from and hold us harmless against any third-party claims for damage compensation insofar as the Supplier is responsible for the fault.

9.2 Our costs for any appropriate and necessary measures undertaken by us in such cases in order to avoid product liability damage shall be reimbursed by the Supplier. We shall inform the Supplier about the content and extent of such measures, in particular in case of any recalls. Any other statutory claims to which we might be entitled shall remain unaffected thereby.

9.3 The Supplier undertakes to take up sufficient product insurance against all product liability risks and to provide us with the relevant insurance certificates on request.

9.4 The Supplier shall owe the delivery of their goods and services free from any third-party claims, in particular as far as the contractually agreed purposes of use are concerned.

9.5 The Supplier shall indemnify us from and shall hold us harmless against any infringements of proprietary rights resulting therefrom and shall reimburse us for any expenses arising from any third-party claims, insofar as such claims arise from a culpable breach of duty on the part of the Supplier or any of its agents.

10. Rescission of the contract - damage compensation

10.1 If the Supplier does not fulfil the contractual obligations which it has assumed in the purchase order confirmation or if it has not fulfilled them in conformity with the contract, we are entitled to rescind the contract and ask the Supplier for damage compensation in lieu of performance after unsuccessful expiry of a suitable grace period.

10.2 In particular, we shall be entitled to rescind the contract if the Supplier defaults on its obligations pursuant to Clause 13.

10.3 We shall also have the right to rescind the contract if the Supplier suspends or ceases deliveries or files for insolvency.

10.4 The right of extraordinary termination for good reason in case of ongoing contractual obligations [*Dauerschuldverhältnisse*] shall remain unaffected.

11. Retention of title, free-of-charge contributions made to the Supplier

11.1 We disclaim any provisions and declarations of a retention of title on the part of the Supplier insofar as they exceed the usual right of retention of title.

11.2 Any items provided by us to the Supplier free of charge shall remain our property just as much as any tools, drawings or other documents provided by us to the Supplier in connection with the conclusion or implementation of a contract. Tools provided to the Supplier free of charge may only be used for the production of the goods to be delivered to us.

11.3 The Supplier shall process or modify any items provided by us free of charge on our behalf. To the extent such items are processed together with other goods, we shall acquire a joint right of property to the newly created goods on a pro-rata basis based on the relation between the value of our contribution to that of the other items at the time of processing. If our contributions are irretrievably mixed with any other items which are not our property, we shall acquire a joint property right on a pro-rata basis based on the relation between the value of these contributions and that of the other items at the time that such goods were integrated with each other. If such integration leads to a situation where items belonging to the Supplier take precedence over our contributions, the Supplier shall grant us a pro-rata joint property right to the new items and shall keep such items in its custody on our behalf.

12. No assignment

The rights and obligations of the Supplier arising from the contract may not be assigned or transferred without our permission in writing. Section 354a of the German Commercial Code (HGB [Handelsgesetzbuch]) shall remain unaffected thereby.

13. Confidentiality

The Supplier shall be obliged to treat all drawings, plans, pictures, calculations, models, designs and other documentation made available to them as confidential insofar as the latter are not generally known or have not been made publicly available. It may only disclose such items or make them available to any third parties with our express written permission insofar as such third parties will be bound by similar obligations to confidentiality. The Supplier shall be liable to us for any infringement committed by third parties engaged by it as if they were its own infringements. The confidentiality obligation shall survive the termination of the contract. The confidentiality obligation shall not expire until the know-how contained in the documents in question has reached the public domain. Any infringements of this confidentiality obligation shall render the Supplier liable to pay us a contractual penalty, the amount of which shall be subject to our equitable discretion and the equitability of which shall be subject to the assessment of a competent court. All further claims shall remain unaffected hereby.

14. Place of performance, applicable law, jurisdiction, other provisions

14.1 The place of performance with regard the obligations of the Supplier shall be the delivery address stated in the purchase order.

14.2 The only law applicable shall be that of the Federal Republic of Germany with the exception of UN sales law.

14.3 Jurisdiction shall lie with the competent court at the location of our registered office. We do, however, also have the right to sue the Supplier at its general place of jurisdiction.

14.4 Should any of the provisions of these General Terms and Conditions of Purchase be invalid in whole or in part, the validity of the other provisions shall remain unaffected thereby. In such a case, the invalid provision shall be replaced by a lawful provision producing an outcome that comes as close as possible to the original intention behind that provision.

Version as of 04/2021