

Purchasing Terms and Conditions Putzmeister Concrete Pumps GmbH (Version 2015)

A purchasing contract or contract for labour or work and materials will only be accepted by ourselves (hereafter referred to as the “purchaser”) on the basis of these purchasing terms and conditions.

I. Scope of validity of the purchasing terms and conditions

The following purchasing terms and conditions are exclusively valid. The purchasing terms and conditions are also and even valid if the purchaser accepts deliveries without reservation despite being aware of business terms and conditions stipulated by the supplier that deviate from or contradict these purchasing terms and conditions. They are also valid for all future business relations with the supplier, also and even if they are not explicitly agreed upon once more. Other business terms and conditions stipulated by the supplier or customer only apply if the purchaser has explicitly accepted them in writing.

II. Orders, Prices

1. Orders and delivery schedule demands, together with any alterations or additions to the same, are only valid if the purchaser has submitted or confirmed them in writing or by facsimile. If the supplier amends the order, the purchaser is not bound to the same. An amended confirmation of the order on the part of the supplier is judged to be a new offer, to which the supplier is bound for a period of 14 days following receipt of the same by the purchaser. Acceptance by the purchaser must be given in writing; the principles of commercial letters of acceptance do not apply.
2. The purchaser is entitled to revoke the order if the supplier does not accept the order within 14 days after the receipt of the same. An order is accepted by returning the order confirmation attached to the order. The date of the postmark is decisive for the receipt of the order by the supplier and the receipt of the order confirmation by the purchaser. The same applies to an order revocation sent by the purchaser.
3. The purchaser is entitled to demand alterations to the construction and design of the delivery item within reasonable limits for the supplier. The impact of such alterations (e.g. in terms of excess or lower costs, amended delivery dates, etc.) will be agreed between the parties in a reasonable manner.
4. The agreed prices are fixed prices, delivered free to the requested destination, and inclusive of packaging and other ancillary costs.

III. Delivery

1. The goods are accepted by the purchaser only with reservations regarding the inspection with respect to defects, the agreed quality, the guaranteed characteristics and the completeness.
2. Materials and parts placed at the purchaser's disposal are to be returned free of charge once they are no longer needed to complete the delivery.
3. Each delivery must be accompanied by a delivery note in duplicate stating the type and quantity of goods delivered, together with the purchaser's order / item number(s), suppliers-number and article number(s). If the goods are delivered directly to a third party, or if the goods are collected from the supplier by a third party, the despatch instructions of the purchaser must be observed in all cases.
4. Deliveries must be effected only in the quantities and on the dates indicated by the purchaser in the purchasing order. Partial deliveries require prior approval by the purchaser.
5. The supplier is obliged to comply with the stipulations of the packaging regulations in their relevant valid form.

IV. Delivery date; Cancellation; Compensation

1. In the case of non-compliance with the agreed delivery dates or if fixed deadlines are overrun, the purchaser has recourse to the rights and claims – including claims for compensation – as defined by legal stipulations. If a deadline set by the purchaser expires without effect, the purchaser is, in particular, entitled to demand compensation in lieu of the delivery and to purchase his needs elsewhere at the expense of the supplier. If the supplier cannot be held responsible for non-performance, the purchaser is not entitled to demand compensation in lieu of performance, but is entitled to withdraw from the contract.
2. The purchaser points out that if agreed delivery deadlines are not complied with, the purchaser may also incur damages for the reason that they are subject to supply obligations and delivery deadlines with its customers that require prompt and proper delivery on the part of the supplier.
3. The decisive date for determining adherence to the delivery date or the delivery schedule is the receipt of the goods by the purchaser respectively the third party designated by the purchaser, or, if the goods are to be collected, the date on which the supplier has made the goods available.
4. If the goods are supplied prior to the delivery date without the permission of the purchaser, the purchaser is not obliged to accept nor pay for the delivery until the agreed delivery date.
5. The supplier will inform the purchaser immediately and in writing if problems arise or are foreseen with the manufacture or delivery of the agreed quality, or with the procurement of materials, or if other circumstances arise that prevent the supplier from completing the delivery correctly and on schedule. If the supplier neglects to perform this duty, the supplier is obliged to compensate the purchaser for any damages arising from this negligence.

V. Invoices; Payments

1. All suppliers' invoices must be submitted to the purchaser with indication of the purchaser's order number(s), suppliers-number and article number(s).
2. The payment period commences on the latter of the date of delivery or receipt of the invoice by the purchaser.
3. Unless specifically agreed upon, invoices are paid at the discretion of the purchaser within 14 days at a discount of 3 %, or net within 30 days from the date of commencement of the payment period, as outlined in V.2. above.

4. Payment by the purchaser is subject to the proviso that there are no obstacles resulting from national or international regulations of foreign trade legislation or from embargoes (and/or other sanctions).

VI. Right of examination

The purchaser reserves the right to examine all goods at his own discretion at the premises of the supplier or third party used by the supplier in performance of his obligations – even during the production process – as well as at the forwarding company or warehouses. The examination is based on the goods specifications as defined in the order, the samples provided and characteristics guaranteed by the supplier, and any other specific factors agreed with the supplier.

VII. Quality; Documentation

1. The supplier has to observe the acknowledged technical rules, statutory applicable laws and safety regulations and technical data and standards agreed with the purchaser relating to deliveries, documentation and the operating/maintenance instructions. The supplier has to provide all the relevant documentation and operating/maintenance instructions relating to deliveries. Alterations to the delivery item, even if the supplier deems these to be an improvement, must be prior approved in writing by the purchaser. The contract parties will keep each other informed on an ongoing basis of any possible quality improvements.
2. Where the type and scope of the tests, and the means and method of examination have not been firmly agreed between the supplier and the purchaser, the purchaser is willing, where possible, to discuss the examinations with the supplier, if the latter so requires, in order to determine the appropriate testing technology needed.
3. Inasmuch as the purchaser, relevant public authorities or the purchaser's customers demand access to the production process or the test documentation for purposes of subsequently re-examining specific requirements, the supplier will grant this access and provide explanations and every possible support within reason.

VIII. Warranty

1. The supplier guarantees that the delivery complies with the latest technical standard and the laws and safety regulations governing both the production, sale, and utilisation of the delivery item and the safety precautions prevailing in the Federal Republic of Germany, as well as the agreed standard of workmanship. Furthermore, the supplier guarantees that the delivery does not contravene the rights of any third parties.
2. If the delivered goods are defective, or the guaranteed characteristics not supplied, the purchaser is entitled to choose between demanding elimination of the defect or supply of non-defective goods. Moreover the purchaser is, in line with legal stipulations, entitled to reduce the purchase price, withdraw from the contract and demand compensation or reimbursement of futile expenditure.
3. The purchaser is entitled to stipulate a deadline for eliminating the defects in such a way as to ensure that, if the supplier is not able to eliminate the defects within the period stipulated, the defects can either be eliminated by the purchaser himself or by a third party before such time as the purchaser himself exceeds the delivery deadlines agreed with his own customers. The costs of any requisite subsequent remediation are borne by the supplier. If this becomes necessary to prevent any pending dangers or considerable damages as a result of an interruption in the purchaser's business operations that would otherwise occur, the purchaser is, after giving notice to the seller, entitled to eliminate defects or have defects eliminated at the expense of the supplier.
4. If the same goods were also delivered with defects in the past, the purchaser is entitled to revoke the entire outstanding order if goods are once again delivered with defects after the supplier has been set a deadline for eliminating the defects or supplying non-defective goods and has been unable to do so within said deadline. Further legal rights and claims – including claims for compensation – are unaffected.
5. As soon as defects in a delivery have been ascertained in the course of normal business operations, the purchaser is obliged to inform the supplier of the same within a reasonable period of time. A reasonable period of time for the notification of defects is deemed to be within 10 days following detection of the same.
6. The purchaser will either return defective goods to the supplier at the latter's expense and risk, or make the same available, or put the same into storage at the supplier's expense until such time as the goods are collected.
7. The purchaser retains title to any goods returned to the supplier until such time as the amount indicated in the purchaser's debit note has been offset or paid. The goods may not be impounded nor assigned by way of collateral. The purchaser must be informed immediately of any pending or effected seizure or confiscation of the goods by a third party.
8. The statute of limitations for warranty claims on the grounds of material defects expires upon completion of 24 months following commissioning of the delivery item, or upon completion of 36 months following delivery to the purchaser at the latest. Any longer legal statute of limitations remains, however, unaffected.

IX. Liability

1. The supplier is obliged to release the purchaser at the latter's first demand from any liabilities for damages – including the relevant costs of litigation – arising or claimed by third parties from the purchaser on the grounds of substandard deliveries, non-compliance with official safety regulations, insufficient documentation, operating or maintenance instructions, or of any other grounds for which the supplier is responsible. This applies, in particular, in the case of claims filed by third parties against the purchaser on the grounds of liability regardless of negligence or fault in line with the German Product Liability Act or appropriate regulations prevailing in other countries or according to European Community legislation. In such cases, the supplier assumes the liability of the purchaser vis-à-vis the third party if and inasmuch as the cause of the damage lies within the supplier's area of responsibility. The aforementioned exemption from liability is only statute-barred once the claims filed by a third party are also statute-barred.
2. Also if the construction or design of the goods is based on instructions given by the purchaser, the supplier is obliged to inform the purchaser of any risks inherent in the desired construction or design.
3. The supplier is obliged to reimburse the purchaser for all costs incurred by the latter from or in connection with any warning or callback campaigns instigated by the purchaser if and inasmuch as the reason for the campaign is to be found in the domain or organisational responsibility of the supplier. Where possible and within reason, the purchaser will first co-ordinate the content and scope of the measures to be implemented with the supplier and give the latter the opportunity to comment on the same.

X. Use of the delivery within the Putzmeister Group

The supplier and the purchaser agree that deliveries to the purchaser may be intended for use by the purchaser and by other companies of the Putzmeister Group (German Stock Corporation Act [AktG], Section 15) and that the companies of the Putzmeister Group in which the deliveries are used are equally included within the scope of protection of the contract between the supplier and the purchaser (with regards to the protection and supply obligations of the purchaser).

XI. Assignment ban; Set-off; Right of retention

1. The supplier can not transfer part or all of the rights or claims arising from this contract without the express permission of the purchaser. This does not apply to claims to money as defined by § 354 a HGB (of the Commercial Code).
2. The supplier can only offset claims of the purchaser with proprietary claims that are uncontested or have been determined by a court of law.
3. The supplier can only exercise a right of retention if his counterclaim relates to the same contractual relationship and is uncontested or has been determined by a court of law, or if the purchaser is guilty of gross negligence of his duties as stipulated by the same contractual relationship.

XII. Purchaser's title; Insurance

1. Samples, models, drawings, working materials, etc., which the purchaser has furnished or paid to the supplier, remain or become the possession of the purchaser. Instead of any physical possession that it might be necessary to gain for a transfer of title, the supplier is deemed to be safeguarding the items for the purchaser with due commercial caution and free of charge.
2. Where the purchaser provides the supplier with materials or parts, title of the same remains with the purchaser. Immediately upon receipt of the same the supplier is obliged to label them as the property of the purchaser, to safeguard them in separate storage and only to use them for the purposes defined by the purchaser.
3. Materials or parts provided by the purchaser will be processed or remodelled by the supplier for the purchaser. If goods reserved for the purchaser are processed with other materials not belonging to the purchaser, the purchaser acquires co-title to the new thing in the ratio of the value of the purchaser's property relative to that of the other materials included in the processing at the time of processing. If the materials supplied by the purchaser are mixed inseparably with other materials not belonging to the purchaser, the purchaser acquires co-title to the new thing in the ratio of the value of the materials reserved for the purchaser relative to that of the other materials included in the mixture at the time of mixing. If the supplier's input material is deemed to be predominant following the mixing process, the supplier affords the purchaser pro rata title. Instead of transferring the physical possession to the purchaser to prove title, the supplier will be deemed to be safeguarding the relevant goods with due commercial caution and free of charge for the purchaser.
4. The supplier is obliged to take out sufficient insurance cover at his own expense for the drawings, models, tools and all materials and parts provided by the purchaser and to insure the same against all usual risks, in particular against fire and theft, and to provide evidence of the existence of the insurance to the purchaser at the latter's request. Moreover, the supplier is obliged to inform the purchaser without delay of any pending or already effected seizure of the latter's property and of any other impairment of the purchaser's rights.
5. The supplier is obliged to take out an appropriate product liability and recall insurance policy at his own expense. The insurance policy has to cover the risk of statutory liability on behalf of the supplier for damage caused by goods supplied and the risk posed by goods subject to warning and recall campaigns. Proof of existence of insurance cover must be provided by request of the purchaser. The acquisition of insurance and the cover offered in the policy does not affect the liability of the supplier towards the purchaser.

XIII. Export controls

The supplier must advise the purchaser in writing as soon as possible, but not later than two weeks before the delivery deadline, of all information and data required by the purchaser in order to comply with the applicable foreign trade legislation for export, shipment and import and, in the case of redistribution, for re-export of the goods and services, particularly including the following for each item and service:

- The appropriate export list item (if the item is not covered by the export list, this must be indicated with "AL:N");
- The statistical commodity code according to the current commodity classification for foreign trade statistics and the HS code;
- The country of origin (non-preferential origin); and
- Upon request of the purchaser, the supplier's declaration for preferential origin or preferential certificates (export control and foreign trade data).

In the case of any alterations to the origin, to the properties of the goods or services or to the applicable foreign trade legislation, the supplier shall update the export control and foreign trade data as early as possible, but not later than one week before the delivery date, and advise the purchaser of this in writing. The supplier shall bear any expenses and damages incurred by the purchaser due to the absence, defectiveness or late receipt of the export control and foreign trade data.

XIV. Confidentiality

1. The contract partners agree to treat all details of commercial or technical nature, which are not publicly available, and to which they gain access in the course of the business relationship, as trade secrets, even after conclusion of the business relationship. This does not apply to any facts, papers and information, where the relevant contract partner can prove without recourse that these are generally known, or were already known to him prior to the other contract party affording him access to the same, or were made known to him by a third party without any violation of the third party's obligation to secrecy with regard to the other contract party.
2. Drawings, models, samples, parts lists and similar objects and documents belonging to the purchaser and other- also orally given- confidential information from the purchaser, may not be given or otherwise made available to third parties or used for deliveries to third parties without the prior express permission of the purchaser in writing. They are to be returned - at the latest upon completion of the order - free of charge and without the need for any specific demand to do so, as soon and inasmuch as they are no longer needed to complete the order.
3. The contract partners will transfer these same obligations to their subcontractors accordingly.

4. The supplier may only advertise his business relationship with the purchaser with the prior written permission of the latter.

XV. Property rights

1. The supplier guarantees that the delivery does not contravene the rights of any third parties nor does it infringe any copyrights or industrial property rights, such as patents, registered designs, ornamental designs or applications for property rights, of any third parties, nor does it violate any other laws. This applies to all member states in the European Union, the other contracting states in the agreement on the European Economic Area, Switzerland and the USA. The purchaser is not obliged to verify whether any property rights exist on the part of third parties.
2. The supplier releases the purchaser at the latter's first demand from any claims raised by third parties on the grounds of any infringement of property rights and applications for property rights arising from the contractually agreed use of the delivery items, and compensates the purchaser for any damages suffered as well as reimbursing the latter's costs and expenses. In particular, the supplier is obliged to compensate the purchaser in full for any and all damages arising from a withdrawal from sale, including any lost profits, if the purchaser is forced to withdraw the goods from sale on the grounds of a claim filed against the purchaser by a third party for the aforementioned reasons.
3. If an action is brought against the purchaser on the grounds of an alleged infringement of copyrights or industrial property rights or labelling rights or of any other regulations and/or rights by a third party, the supplier will provide the purchaser with suitable security in an amount equivalent to the sum being claimed in the action within three weeks following notification of the action being filed.
4. Clauses 2 and 3 outlined above do not apply if the supplier is not responsible for the infringement. However, the purchaser's right to make legal claims remains unaffected.
5. The contract partners agree to inform each other without delay of any risks of infringement and alleged infringements that become known, and to give each other the opportunity of counteracting conjointly against such claims of third parties.

XVI. Deterioration of assets

If the supplier ceases payments or if an application for insolvency is filed on his assets, or rejected on the grounds of insufficient assets, the purchaser is entitled to withdraw from the contract in respect of the outstanding obligations.

XVII. Compliance

The supplier undertakes that it and its partners, managing directors, supervisory and advisory boards, employees and other representatives comply with legal regulations and, in particular, act preventatively against any kind of criminal or reprehensible misconduct in the course of the supplier's business operations in the context of this contract.

XVIII. Place of performance and fulfilment; Applicable jurisdiction; Venue; Severability clause

1. Sole proper law is that of the Federal Republic of Germany. In cases of doubt, the German-language version of all contract clauses is definitive. Standard purchasing law (Convention on the international Sale of Goods, CISG) does not apply.
2. Place of fulfilment for payments on the part of the purchaser is 72631 Aichtal. Place of performance and fulfilment for the obligations of the supplier is the location where the goods are to be delivered or the service rendered.
3. If the supplier is a businessman, Stuttgart is deemed to be the venue for any disputes arising from this contractual relationship, including any disputes with regard to its establishment and validity, as well as for any obligations arising from cheques and bills of exchange. The purchaser reserves the right to bring action against the supplier at its general or any other justified legal venue.
4. If any of the clauses of these purchasing terms and conditions should prove to be partially or wholly void, validity of the remaining clauses remains unaffected.

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