

# **General Terms and Conditions of Purchase of Freundlinger Luft und Klima GmbH**

## **Application**

All offers, orders, purchases as well as other legal transactions and services take place exclusively on the basis of the Terms and Conditions of Purchase stated herein.

The Supplier expressly confirms that we already object to all deviating provisions contained in any order confirmation or other business documents issued by the Supplier.

We shall not accept any deviating conditions of the supplier and, unless such deviating conditions are confirmed in writing by us, such deviating conditions shall not apply, even if we fail to object to such conditions in the individual case.

These present General Terms and Conditions of Purchase shall be deemed to be a framework agreement applicable to any and all other legal transactions effected between us and the Supplier.

## **Quote, order, contract**

Offer: The Supplier undertakes to exactly adapt its quote with respect to the quantity and quality of the goods to be supplied to our invitation to tender, and to explicitly state in writing any deviations in advance.

If the Supplier fails to supply this written notice, he has no right to claim a higher payment in the event of deviations.

All quotes by the Supplier shall be free of charge.

Order, Contract: Only written orders shall be valid. In order for them to be binding for us, all agreements made verbally, by telephone or via e-mail require written confirmation.

Discrepancies from our order in the Supplier's confirmation of order shall cease to have effect.

## **Prices**

The agreed prices are understood to include VAT, packaging and transport costs and/or shipment expenses inclusive of all costs incurred for the transport authorization. All prices are fixed prices and quoted in Euro (€) that cannot be increased for any reason whatsoever. In the absence of any agreement to the contrary, delivery shall be free to the place of receipt (ship-to location). Shipment is made at the expense and risk of the Supplier.

Any reduction of prices for the Supplier on account of changed market conditions shall also be granted to us to the full extent. The contract partner is obliged to inform us immediately of any such changes in market conditions.

Unless specified in a separate agreement, we are entitled to a deduction of three percent discount for payment within eight days from date of invoice and a deduction of two percent discount for payment within two weeks from date of invoice.

## **Delivery periods and deadlines**

Delivery shall be made at the time and in the quantity specified in the sales agreement or in the order. Delivery periods shall begin with the date of the order.

Compliance with the delivery date or delivery time shall be determined by the date of receipt of the goods by us at the specified place of delivery or user location, or by the completion of successful acceptance within the specified time.

Delivery of goods shall be made exclusively to our receiving location during the effective receiving hours (Monday to Friday 08:00 – 16:00).

The Supplier is obliged to immediately inform us in writing as soon as there is a delay in delivery. In the event of a delay in delivery, we are entitled to claim a contractual penalty payment in the amount of 5% of the value of goods to be delivered for each commenced week, however not exceeding a maximum of 10% of the contract value, irrespective of any fault on the part of the Supplier. In particular, we are entitled to deduct these penalty payments from the invoice amount without any special agreement or understanding. Furthermore, in the case of delays on the part of the Supplier, we are entitled to withdraw from the contract without setting or allowing a period of grace. Should we make such a withdrawal from the contract, the Supplier is not entitled to make any kind of claim against us. All other compensation claims for all damages and adverse consequences resulting from the delay in delivery which exceed the compensation for delay, no matter what kind, shall not be affected.

The Supplier may only claim non-receipt of essential documents that we were scheduled to provide if such documents were not received within a reasonable period

despite the Supplier having sent a written reminder; in this case a delay in delivery shall not commence as long as we fail in our duty to provide the documents. The burden of proof shall be borne by the Supplier.

Acceptance of delayed goods shall always be subject to any and all of our rights.

Impediments to delivery due to Force Majeure shall not apply as delays; in these cases, we are entitled to either withdraw from the contract or to unilaterally postpone the delivery date, without entitling the Supplier to make claims against us.

## **Invoicing and payments**

Invoices shall adhere to legal regulations, in particular the value-added tax law and all specially reached agreements. They may not be enclosed with the delivery and shall be sent to us immediately after the goods have been shipped. In all cases, invoices shall carry the complete order reference number and the order date. The Supplier is liable for any additional or resulting costs due to incorrect or incomplete invoicing.

Terms of payment shall commence at the earliest on the day on which the goods are received at our business premises or at the agreed ship-to location. Payment shall not be deemed as acceptance of proper delivery and thus not as a waiver of possible claims. The Supplier is not entitled to assign to third parties any of its claims against us.

In the case of a breach of contract by the Supplier, we are entitled to withhold payment until full compliance with the contractual agreements.

## **Guarantee, Warrantee, Claims for damages**

1. The Supplier shall assume full and genuine guarantee on behalf of his/her own enterprise as well as on behalf of the subcontractors or suppliers of the vendor for the entire period of 36 months for the complete and faultless execution of the contractually agreed properties and performance of deliveries, in particular for the usually implied and possibly represented, publicly stated properties, and for the properties resulting from specimens and testing, as well as for adherence to all relevant statutory and official regulations applicable at the place of destination, as well as those market regulations disclosed by us.

The guarantee period begins with the date of acceptance by us of the delivered items in accordance with Item "Delivery periods and deadline".

The supplier acknowledges that, due to the genuine guarantee, we are not obliged to inspect the delivered items and contest or notify the Supplier of any defects.

In the case of defects occurring during the warranty period, we shall be entitled to claim their prompt rectification from the contractual partner at their own cost and risk, either by way of improvement (repair, additional delivery of the missing item/service) and/or exchange, to claim a reduction in price, or to return the goods to the contractual partner at their own cost and to cancel the contract; or we shall be entitled to take measures ourselves that remedy the defects or services not rendered by the contractual partner or have these defects remedied or performance of services carried out by third parties at the cost and risk of the contractual partner.

In the event of a repair of the delivered items – including replacement of the defective parts – the guarantee period shall recommence. At the same time the guarantee period of the entire product shall be extended by that period of time during which the product could not be used on account of the defect and its remedying.

The represented genuine guarantee does not alter our other claims, in particular those based on statutory warranty, claims to damages and cancellation of a contract.

2. Any of our entitlements to claims of damages shall be extended also to compensation for lost profit and compensation for all damages which had to be refunded by ourselves to the final customer regardless of the extent of contractual partner's fault.
3. The Supplier shall verifiably draw our attention to all risks related to the reasonably foreseeable use of the product. In the event of a warranty claim, the burden of proof lies with the Supplier that the defect was not given at the time of acceptance. The Supplier also assumes the warranty for hidden defects, whereby the warranty period only begins from the date on which the defect was determined.

4. In the event of defects, no matter what kind, we are by all means entitled to retain the complete outstanding purchase price and/or wage until the defect is entirely corrected.

## **Product liability**

The Supplier shall enclose in its delivery, a copy of instructions for use and warning instructions in the German language. As far as possible and reasonable, these kinds of instructions shall be fixed directly onto the delivered items.

If after the acceptance of the delivery by us, defects of the delivered goods emerge or are detected in terms of Paragraph 5 of the Product Liability Act, and/or that the properties of the products no longer comply with the best available science and technology in terms of Paragraph 8 of the Product Liability Act, the Supplier is obliged to revoke such goods and refund the entire purchase price.

In the event we claim against the Supplier according to the Product Liability Act, the Supplier is obliged to immediately provide us with all requested means of evidence, in particular quality and investigation reports, attests and suchlike, at its own cost.

In such an event, the Supplier is also obliged to reimburse all costs related to the damages and disadvantages incurred by us through our liability, as well as the related process costs, irrespective of any fault. The Supplier shall conclude an appropriate insurance in terms of Paragraph 16 of the Product Liability Act, whereby we reserve the right to request proof of a suitable financial security from the Supplier. Should the Supplier not comply with such a request within 14 days, we are entitled to withdraw from the contract and may demand claims for damages including lost profits.

## **Quality Assurance**

Provided no other agreements are made in writing, the Supplier shall comply with all pertinent quality standards in their valid form, in particular those standards valid in Austria, like for example, Austrian standards (ÖNORMS) and EU directives.

## **Cancellation of contract**

In the case of a delay of delivery, bankruptcy of the Supplier or bankruptcy dismissal for lack of assets, stoppage of payments and Force Majeure, we are entitled to entirely or partly withdraw from the contract. Should we make such a withdrawal from the contract, the Supplier is not entitled to make any kind of claim against us. The contractual partner is obliged to inform us immediately of any such circumstances.

## **Place of Performance, Governing Law and Court of Jurisdiction**

The registered office of our company (Wels/Austria) shall be the place of performance for all rights and obligations resulting from the concluded legal transactions for both parties. In particular, this applies for the Supplier for the delivery and payment, irrespective of any individual agreement on the delivery and payment location and/or the acceptance of all transport costs by us.

For the Supplier, the place of jurisdiction for all disputes arising from this contractual relationship or connected to this contractual relationship is exclusively the technically competent district court in Wels / Austria. We are however entitled, at our discretion, to institute proceedings against the Supplier in any other competent court according to national or international law.

This agreement is subject only to the Austrian substantive law. The conflict-of-law rules of the international civil law and the UN Convention on Contracts for the International Sale of Goods (CISG) are hereby explicitly excluded.

## **Protective rights of third parties**

The supplier guarantees that no protective rights of third parties (patent rights, trademark rights, utility model rights, copyrights, equipment, product names, know-how, territory protection or any similar rights, even when these rights have only just been applied for and are pending) are infringed upon. We are not obliged to check whether immaterial rights are assigned to the goods and/or whether such rights are being violated. Instead we are entitled to assume that the Supplier is entitled to all third-party rights necessary for the correct contract fulfillment. The Supplier shall exempt us from all claims in that respect, and indemnify and hold us harmless against any claims by third parties.

Without prejudice to further statutory rights on our part, in such a case, we are entitled to refuse acceptance of the goods until the validity of the asserted claims is clarified, to return already accepted goods to the Supplier at their costs and to withhold payment of the entire purchase price.

## **Force Majeure**

Any unforeseeable event and any case of Force Majeure which hinders, delays or renders impossible the timely manufacturing, delivery or acceptance, like for example official government measures, war, strike, lock-outs, rebellion, operating failures, transport failures, lack of raw materials or their late assignment, other fundamental events, etc. entitle us, without granting a period of grace, to partly or entirely withdraw from the contract, to unilaterally reduce the agreed amount to be delivered or to request the later delivery or execution of an awarded contract; whereby this shall not give rise to any kind of compensation claims by the Supplier whatsoever.

## Contractual documents

No information, drawings or other technical documentation provided by us to the Supplier in connection with the performance of the contract and no drawings, information or other technical documentation prepared by the Supplier on the basis of the our specifications and information shall be used for other purposes than the performance of the contract, be reproduced or made accessible or disclosed to third parties. These documents remain our sole property and upon request shall immediately be released to us including all certified copies and duplications thereof. In the event, for whatever reason, delivery does not take place, the Supplier shall immediately return all documents without any particular request. The orders, as well as the related works, shall be considered to be trade secret and are to be treated as confidential. The Supplier is liable for all damages that result from the violation of one of these obligations.

The Supplier is only permitted to quote or refer to its business connection with us in any kind of promotional material and publications with our explicit, written approval.

## Other provisions

In the event any one or more of the provisions of our General Terms and Conditions of Purchase, in whole or in part, become invalid, all other provisions of these General Terms and Conditions of Purchase shall nevertheless remain in full force. The ineffective provision shall be replaced by another one which is effective and whose contents and purpose are as close as possible to the ineffective provision.

The headings of the provisions included in these General Terms and Conditions of Purchase are used for reference only and must not be used for interpretation.

No business development occurring between the contractual partner and ourselves, and no delay or omission regarding the execution of a right, remedy or legal means granted to us on the basis of these General Terms and Conditions of Purchase, shall constitute a waiver of these rights. Any right and legal means or any remedy granted to us in this document is considered as cumulative and co-exists with the same priority alongside and in addition to other rights, legal means and remedies provided by law.

To the effect that these General Terms and Conditions of Purchase require the contractual partner to use the written form, it cannot be replaced by the electronic form in terms of the Signature Act (BGBl I 1999/190).