

GENERAL CONDITIONS OF PURCHASE for the supply of goods, machinery, apparatus or other equipment

of Ebner GmbH & Co. KG, Plants and Apparatus
Karl-Ebner-Straße 8, D-36132 Eiterfeld

1. Order

These general conditions of purchase form an integral part of the order letter.

Only written orders provided with a legally binding signature are valid. Verbal agreements are only valid if they have been confirmed in writing by the buyer. Written communications that have been exchanged before an order is placed are not legally valid if they are not included in the order. The supplier has to declare that he agrees with these conditions of purchase by signing the order confirmation.

The terms of delivery that are attached to the offer or to the supplier's order confirmation are not valid. Special conditions issued by the supplier are only valid if the buyer expressly declares that he agrees to such conditions.

The supplier may only assign his contractual obligations to others if the buyer agrees to this. Subcontractors may only be called in if the buyer agrees to this.

Follow-up orders

The supplier undertakes to execute follow-up orders for this plant within the delivery period at the prices and subject to the conditions relating to this order.

2. Prices, scope of supplies and/or scope of services

The agreed prices are fixed prices, inclusive of taxes owed to the authorities, packed, insured, unloaded free of charge, plus VAT. This applies unless something to the contrary is stipulated in the order.

3. Freight, packing and dispatch

General

Unless the order specifies something to the contrary, freight and packing costs are borne by the supplier. Freight includes all transportation and transshipment costs of the manufacturer up to the construction site or place of use, including unloading at the construction site.

Packing

Packing is to be carried out in such a way that the delivered parts, when transported to the place of installation, are effectively protected against any adverse transport and weather conditions that may occur. Packing materials remain the property of the supplier, that is, the costs of returning the packing materials or the costs of removing them are to be borne by the supplier.

Dispatch

The buyer is to be informed when the goods are ready for dispatch. The goods may only be dispatched when this is expressly requested. If the material cannot be called off by the buyer on the agreed date, it must, by mutual agreement, be properly stored by the supplier. When the invoice has been paid in full, ownership and the right of disposition are transferred to the buyer, even if the material is still stored by the supplier.

The buyer's special instructions are to be adhered to with regard to dispatch and notification of dispatch. The dispatch provisions referred to by the buyer must be adhered to meticulously.

4. Inspections and acceptance test at the factory

The buyer and his representatives reserve the right to carry out inspections and acceptance tests for all parts at the supplier's workshops and at the construction site. His inspection officers are to be provided with all necessary measuring instruments and assistants free of charge.

The buyer's out-of-pocket expenses are to be borne by him.

If the delivery covers machinery, apparatus and similar for which guaranteed figures are stipulated in the order, then these are to be proven by the supplier by means of tests in his workshops or, if requested by the buyer, after they have been put into operation. These tests are carried out at the expense of the supplier and the inspection methods to be used are to be determined by mutual agreement.

If the buyer so requests, the supplier must furnish proof that the delivered material possesses the required qualities.

If the buyer's inspection results do not conform to the qualities demanded in the order, the material in question will be rejected and the costs incurred by the buyer as a result of the repeated acceptance tests are to be borne by the supplier.

The buyer is to be informed in writing of the test run or that the material is ready for the acceptance test three weeks in advance. Packing and painting may not be carried out before the acceptance test.

5. Incompleteness of the buyer's data

The supplier is himself responsible for seeking clarity about all the order details and the stipulated work. He must arrange for the required documents and information to be duly provided at his own expense. Errors that ensue as a result of this obligation not being adhered to are the supplier's responsibility.

The supplier cannot plead that the documents sent to him are unclear or inadequate or that individual tasks, that constitute contractual performance according to what is customary in the trade, are not specifically stated.

6. Contractual documents

If individual component parts of the order contradict each other, the following order of precedence shall apply:

- Order specification
- EBNER conditions of purchase
- The supplier's offer
- The supplier's conditions of sale.

In the event of overlapping or contradictory statements in the underlying conditions, then in principle the version that is tighter, that is the most stringent for the supplier, shall apply. However, before proceeding in accordance with the above, the overlaps or contradictory statements are to be brought to the attention of EBNER and EBNER must agree to the next course of action. The consequences of not complying with this instruction are borne by the supplier.

Differing offer conditions from the supplier and correspondence that relates to these are only valid if they are accepted expressly and in writing by EBNER.

7. Drawings and plans

Key plans, layout and function plans, machinery plans etc. which the buyer requires for preparing the workshop drawings for the construction work as well as workshop drawings for the manufacture, must be submitted to the buyer for approval without the supplier being released from his warranty obligations.

When producing technical documents and drawings the buyer's instructions are to be followed.

After completion of the drawings, that is before they are finalised, the buyer is to be provided with a complete set of drawings (no workshop drawings), unsolicited and free of charge.

If work is to be carried out according to the buyer's drawings, all the regulations contained therein must be strictly adhered to so that it is guaranteed that work will be carried out in conformity with the drawings. Processed workpieces are to be deburred without this being specifically mentioned in the implementation plans. Deviations are to be remedied at the supplier's expense.

Drawings and calculations for plant components that require an official permit before they can be constructed and put into operation are to be made immediately.

8. Assembly instruction and operating regulations

The supplier is obliged to inform the buyer adequately and in good time about modes of operation and operating procedures as well as the maintenance work that will be required within his scope of supply. For this purpose the buyer will be provided with three provisional operating regulations 8 weeks before dispatch that, due to the operating experiences and changes, are to be supplemented or revised after completion of the test operation up until final acceptance so that there are detailed and final operating regulations with description and revision documents.

The scope and content of the final operating regulations is to be set out in such a way that the operating personnel can operate and maintain the delivered equipment faultlessly, reliably, economically and in accordance with the manufacturer's requirements. Possible malfunctions, damages as well as their effects and the remedying of these are to be described explicitly.

The service and maintenance documents of possible sub-suppliers must be supplied in the original. The relevant storage regulations for temporary storage up until the start of assembly are also to be delivered by the supplier.

The supplier must make enquiries in good time about the existing storage opportunities and adjust the storage regulations accordingly.

9. Nameplates

Unless something to the contrary is stipulated in the order text, DIN 2403 must generally be adhered to. Rating plates are to be created and affixed in accordance with the official regulations.

If apparatus is supplied, a place for the EBNER nameplate is to be provided.

10. The buyer's amendment requirements

The buyer's amendment requirements are to be implemented even after the contract has been concluded. Amendment requirements are always to be sent in writing. If the amendment requirements could have an adverse effect on the contractually agreed earned values, the supplier must inform the buyer of this in writing immediately. Such amendments may only be implemented by the supplier if the buyer confirms the relevant requirement in writing after he has received the aforementioned information.

11. Delivery period

The agreed delivery periods start as from the date of the order and are to be duly adhered to. If execution is interrupted during the delivery period due to Acts of God, which cast doubt on prompt completion, then the buyer is to be informed immediately in writing. If necessary, the buyer will grant a reasonable extension to the delivery period if the overriding deadline situation of the total project permits this. If the supplier fails to inform the buyer of the situation or if he is late reporting this, he cannot cite obstruction to the buyer.

12. Contractual penalty

If the supplier fails to meet the stipulated deadlines and if the supplier cannot cite an obstruction pursuant to Subsection 10, or if the buyer is not able to grant an extension to the deadlines, then the buyer is entitled to demand compensation as follows for each commenced week of failure to meet the deadline:

1 % per week

However a maximum of 10% of the total amount of the order.

Delayed receipt of primary material and/or defective material does not release the supplier from the contractual penalty. Contrary to § 341, Subsection 3 German Civil Code (BGB) and/or § 11 Subsection 4 Contract Award and Contract Regulations for Construction Work (VOB/B), the buyer reserves the right to claim a payable contractual penalty up until the time of final payment.

If the delivery is not available on the dispatch date, then in addition to the contractual penalty the supplier will send the parts free of charge as quickly as possible to the final customer, the details of whom have been provided to him.

However, even if the supplier has paid the contractual penalty, he remains obliged to execute the contract. If the supplier proves that he is not guilty of intent or gross negligence, he is not liable beyond the amount of the contractual penalty for damage incurred directly by the buyer. If he is guilty then he must pay for the damage.

13. Right to cancel a contract

The buyer is entitled to cancel the contract

- if the supplier does not comply with the stipulated deadlines and
- if defects cannot be remedied despite, as a maximum, two attempts to remedy them.

Even in the event of cancellation, the supplier must pay the contractual penalty pursuant to Subsection 12 and he must pay in full for any damage incurred by the buyer.

The delivery will remain in the possession of the buyer for free of charge use until a replacement of the same standard is provided.

14. Warranty

The supplier warrants that his supplies and services possess the contractually warranted qualities and that they comply with the acknowledged and accepted technical regulations and the legal or official regulations that are valid at the time. This warranty applies to the whole scope of supplies and also to supplies and services from the supplier's subcontractors and covers in particular:

- Warranty for completeness
The supplier guarantees, within the contractually agreed scope of supply, a complete installation and/or plant that is ready for use. This also includes any unnamed firmly installed or mobile technical and engineering fittings without which the plant or installation cannot be duly operated or maintained and also the initial filling of the plant with lubricants and delivery of other working materials without which the plant cannot be put into operation. This does not however include parasitic energy and fuel, chemicals etc.
- Warranty for quality
The supplier guarantees the quality of the type of constructive design taking into account the operational and repair requirements (cleaning, inspection, condition monitoring, accessibility etc.) of the materials used as well as the quality of the processing and assembly (if included in the scope of supplies) of the delivered plant components.
- Warranty for performance figures
The guarantees for the performance figures are specified in the order letter. They are to be proven by the supplier in the performance tests.

If, at the end of the appointed times or periods, as stipulated in the order letter, or from the time these were amended by mutual agreement, at the latest however at the end of the warranty period, guaranteed performances are not achieved, the buyer can demand that the supplier pays the contractual penalties as stipulated in the order letter; he can enforce these contractual penalties - even without a reservation to that effect upon acceptance - until final plant take-over.

The buyer's entitlements to performance and/or rework as well as his warranty claims are not affected by the contractual penalty regulation. The buyer's claim to performance continues to exist until the buyer declares expressly and in writing that in this respect he is no longer insisting on contractual performance.

The warranty is valid in such a way that any defects detected during the warranty period must be removed by the supplier within a reasonable period that is to be agreed by the parties (including assembly). Even spare parts within the scope of supplies that are not yet installed and whose unsuitability has been proven are to be replaced or reworked. This applies even if the material has already been accepted. The parts subject to wear and tear are to be kept distinct

from the replacement parts. If the supplier is demonstrably unable to remove the defect, the buyer has the right, at the supplier's expense, to instruct another contractor to remedy the defect, to demand a reasonable purchase price reduction or, if removal of the defect is not possible, to reject this plant component as not being in accordance with the contract.

Any damages that are incurred due to the following are excluded from the warranty:

- Demonstrably improper handling by the buyer and/or building owner.
- Non-compliance with the statutory and official regulations that apply to the operation and maintenance of the delivered products.
- Non-compliance with the operating instructions provided in writing by the supplier.
- Use of unsuitable operating materials.

The supplier cannot in any circumstances plead that his liability is excluded or limited because he adopted proposals made by the buyer within the context of the invitation to tender, the planning or the construction and commissioning of the plant.

The warranty period and the performance figures for the total scope of supplies are valid for 24 months after acceptance and a maximum of 36 months after delivery.

Until the warranty period expires, the buyer is entitled to a warranty holdback that equates to 10 % of the contract price.

The warranty holdback can be replaced by an unlimited directly enforceable bank guarantee from a German first-class bank.

The period of limitation for the warranty covering the rejected parts is suspended as result of the written complaint which can be lodged at any time within the warranty period.

For replaced or renewed plant components the warranty period begins again on the date of recommissioning.

Availability of replacement parts and parts subject to wear and tear

The supplier guarantees that replacement parts and expendable parts for the plant that is to be delivered can be purchased from him for at least 15 years subject to the conditions of the negotiation records.

15. Insurance

Public liability insurance

The supplier declares that he has taken out a public liability insurance policy to cover the following claims payments that may ensue from his liability under civil law towards third parties (personal and material damages) during the provision of the services including commissioning and test operations:

In the event of death or physical injury:

€ 1 million per event

per damaging event:

€ 2.5 million per event.

Transport insurance

The buyer is insured against transport risks.

16. Invoicing

All invoices must be mailed separately to the buyer in duplicate. Invoices must never accompany the goods.

In the event of partial payments/advance payments, a separate invoice is to be raised for each due date quoting the order number, the total order value, the payments received, the payments that are still outstanding and the amount payable.

In the event of instalment payments which may be made for a delivery, the delivery notes for the parts to be delivered must be attached to the invoice.

17. Payments

Unless otherwise stipulated, payments are made after 14 days with a 3 % discount or 45 days net after due date if the invoices are submitted in good time.

If technical documents are delivered late or if they are incomplete or if the handover of supplies and services is late or defective, the buyer is entitled to withhold payments.

Amounts owed to the supplier may not be assigned.

18. Transfer of ownership

Ownership of the supplies/services is transferred to EBNER as soon as they are processed and/or completed at the supplier's factory and are paid for. The transfer of ownership is of no relevance as far as the transfer of risks and the warranty are concerned. Up until the time that the risks are transferred, the supplier will store these supplies/services separately; he will mark them as being the property of EBNER and will keep them in a safe place with the delivered products or product parts.

19. Indemnification and patent infringement

The supplier will indemnify the buyer and will hold him harmless against any third-party claims that relate to the goods delivered by the supplier or to actions or omissions on the part of the supplier or a third party whom he has called in for the execution of the order.

The supplier grants the buyer free use of the delivered goods and free disposition thereof. He will indemnify the buyer and will hold him harmless against any third-party claims which ensue from any infringement of patent rights and/or other third-party rights.

The delivered item must - even if it is a custom-built product - be in keeping with the latest technological developments and must conform to the statutory and other relevant safety and accident prevention regulations, environmental and occupational medicine regulations and provisions.

20. Observance of secrecy

Any publications about the construction project, including for advertising purposes, are only permitted with the written approval of EBNER.

The documents made available by EBNER within the context of an order may not be used, in whole or in part, for other purposes. Third parties must not be allowed to examine the documents. In the event of non-compliance, EBNER is entitled to demand compensation.

The supplier undertakes not to correspond or communicate directly with the end-customer in relation to an order.

21. Place of jurisdiction

The contract and all legal relationships between the parties that ensue from this contract are subject to the law of the Federal Republic of Germany.

The UN Sales Law does not apply to this contract.

The exclusive place of jurisdiction is Fulda.

22. Invalidity

If individual parts of these Conditions of Purchase are ruled out by law or an individual contract, this will not affect the remaining provisions.