

Purchase Conditions

Daxner GmbH, Vogelweiderstraße 41, 4600 Wels, Austria

1. Terms

- 1.1 Our purchase conditions shall apply exclusively to all purchases; conflicting or contrary terms and conditions of the supplier shall be without effect unless we have expressly consented to them in writing. Our purchase conditions shall be valid and applicable even if delivery and performance of the supplier is accepted without reservation and in cognizance of any contrary terms and conditions of the supplier.
- 1.2 All verbal agreements reached between us and the supplier shall be put in writing. Delivery shall always be understood to mean the performance as well.

2. Proposals

- 2.1 The quote given by the supplier shall be in accordance with our inquiry. If supplier has a technically or economically more favourable solution, supplier shall quote for this separately and shall clearly point out any deviations from our inquiry.
- 2.2 Offers shall be binding, free of charge and entail no obligation on our part. Cost estimates will only be paid for if prior agreement is reached beforehand in writing.
- 2.3 We reserve the title and copyright to all our illustrations, drawings, calculations, the means of manufacture of any kind, and all other documents. They must not be disclosed to third parties without prior express permission in writing. They shall be used solely for production purposes on the basis of our order, and, once the order has been executed, shall be handed back to us, when we so request, including any copies that may have been made. They shall be kept confidential vis-à-vis third parties. The provisions listed in paragraph 16 shall also apply.

3. Orders and Changes

- 3.1 Orders and changes to orders shall be in writing. Any orders placed verbally shall require our confirmation in writing to be binding.
- 3.2 Every order and change to an order shall be confirmed by the supplier in writing.
- 3.3 The supplier shall promptly check the order for any noticeable errors, ambiguities or incompleteness, or the unsuitability of specifications for the intended use, and promptly inform us about any necessary changes to or more detailed specification of the order.

4. Invoicing, Payment

- 4.1 The price indicated in the order shall be a fixed price unless directed otherwise by us. The price shall be to FCA INCOTERMS 2010 in EURO excluding taxes.
- 4.2 Unless agreed otherwise in writing, payment shall be effected within 30 days, calculated from the time of delivery/performance and receipt of an approved invoice.
- 4.3 Each order with its own number shall be invoiced separately.
- 4.4 We shall be entitled to any legal rights of set-off and retention.
- 4.5 We shall be entitled to cancel the contract without notice if an application has been made to open insolvency proceedings on the assets of the supplier.

5. Amendments and Termination

- 5.1 We shall be entitled to alter the scope of delivery even after the order has been placed. In the event of such subsequent amendments, the supplier shall promptly inform us in writing as to what effects the request for change will have, especially with regard to time and costs.
- 5.2 Changes to the scope of delivery shall only be permissible after our prior written agreement.

- 5.3 All deliveries shall be executed with observance of all the relevant regulations (for example, the specifications we have indicated, DIN, VDE, ATEX, NEC, FDA or similar standards). Any costs/losses arising due to failure of supplier to observe these regulations shall be borne by the supplier.
- 5.4 Hazardous substances and/or materials shall be marked by the supplier with the relevant safety data sheets included in the delivery.
- 5.5 We shall be entitled at any time to rescind or suspend the order, partly or entirely. In such a case, the supplier shall be entitled to payment for the documented and verifiable costs he has incurred.

6. Shipping

- 6.1 The deliveries shall be in accordance with FCA INCOTERMS 2010.
- 6.2 Documents and invoices shall bear our order or call-off number, the vendor number, and our material number and quantity. Shipping documents shall also bear at least the delivery point.
- 6.3 We cannot be held responsible for any delays in processing due to the failure of supplier in providing this necessary information. We reserve the right to invoice the supplier for the additional costs incurred, if any.
- 6.4 We shall be entitled to return the packaging material for the goods at the expense of the supplier.
- 6.5 Any additional costs or expenses resulting from deficient packaging shall be borne by the supplier.
- 6.6 If, and insofar as, an acceptance is agreed, the transfer of risk shall take place at the time of acceptance.

7. Certificates of Origin

- 7.1 Certificates of origin requested from the supplier shall be accurate and bear all of the necessary information, and shall be made available promptly.
- 7.2 The supplier shall notify us promptly in writing, without being asked, if the information on the certificates of origin for the delivered goods is no longer valid.
- 7.3 The same shall apply for evidence of fiscal sales tax with deliveries both within the European Union or outside European Union.
- 7.4 The supplier shall notify us promptly if a delivery is partly or totally subject to export restrictions under Austria law or some other law.

8. Delivery

- 8.1 Time periods and dates agreed for delivery are binding.
- 8.2 If the supplier can foresee that the goods cannot be delivered within the delivery period, the supplier shall promptly notify us in writing stating the reasons why and naming the anticipated new time of delivery. Our rights due to the supplier's being in default shall remain unaffected by this.
- 8.3 If the supplier does not fulfil his obligation within the agreed delivery period, a contractual penalty of 0.5% of the total order value for each week of delay shall be payable to us, however not to exceed 5% in total. Over and above this, the supplier's liability under statutory provisions shall apply.
- 8.4 If a contractual penalty is agreed, this shall be claimable once the closing payment is due, without this requiring additional legal procedures.
- 8.5 Partial deliveries shall be permissible only after obtaining our express permission in writing.
- 8.6 If deliveries are made earlier than agreed, we shall be entitled to set a payment date for invoices no earlier than the agreed delivery deadline and/or put the goods into storage until that time, at the supplier's expense.

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9. Force Majeure

Force majeure is any external event that can be attributed to the forces of nature or is brought on by the actions of a third party, and which, could not be foreseen, avoided or rendered harmless with commercially reasonable means, even after taking the greatest care appropriate to the circumstances. Force majeure frees the contractual partner for the duration of the event and to the extent of its effect on the obligation to perform. The contracting parties are under an obligation to make all reasonable efforts to promptly pass on the necessary information and to adapt their duties to the altered circumstances in good faith.

10. Defects

- 10.1 The supplier warrants that all parts delivered are brand new, that the delivery item has no defects that would diminish its value or suitability, is of the agreed or guaranteed quality, is suitable for the use prescribed in the contract, and conforms to the generally recognised codes of practice, the latest authority regulations, the equipment safety directives, the latest technical safety regulations, and the health and safety regulations.
- 10.2 We are legally entitled to the statutory claims for defects and the statutory periods of limitation shall also apply.
- 10.3 We shall have the right to choose either rectification of defects or supply of a new item.
- 10.4 The place of execution for defects claims shall in all cases be the place of use.
- 10.5 With notice of defects, the period of limitation shall be extended by the time span between notification and rectification of defects. In case the item is replaced, the period of limitation shall begin again. In case of partial renewal, this shall apply for the renewed parts.
- 10.6 Defects not detected or expressly mentioned in an acceptance procedure shall not be considered as approved.
- 10.7 We shall notify the supplier of any defects in the delivered items as soon as they are detected in the circumstances of normal business operations, in some instances not until installation at the designated place of use. In this instance the supplier shall waive the objection of delayed notice of defects.
- 10.8 Beyond the above, the supplier shall give warranty under the statutory regulations.

11. Liability

The supplier shall be liable in accordance with the statutory regulations and shall indemnify us from claims related to any breach of its warranty.

12. Product Liability

- 12.1 Where the supplier is liable for product damage, he shall indemnify us against third-party claims for damage on first demand, insofar as the cause lies in his area of control and organisation.
- 12.2 The supplier shall also be obligated to refund any expenses we incur due to, or in connection with, a recall action we undertake. We shall notify the supplier about the content and scope of any recall measures to be undertaken as far as is possible and reasonable, and we reserve our rights to any other statutory claims.

13. Insurance

The supplier shall carry suitable insurance coverage on in accordance with the industry standard and maintain it until the end of the warranty period.

Evidence of this shall be provided upon request. The scope of contractual and statutory liability shall not be limited as a result of any insurance coverage.

14. Property Right

The supplier gives an assurance that the delivery and use of the goods or services will not violate the protective rights of a third party. The supplier shall bear any license fees that may be imposed.

15. Reservation of Ownership / Confidentiality

- 15.1 We shall not recognise extended or prolonged reservation of ownership by the supplier. We must not be refused the usual commercial use of the delivery item due to a reservation of ownership.
- 15.2 All documents and records that we have made available to the supplier shall remain our property, and must not be disclosed to any third party unless we have given prior express permission in writing. Upon completion of the project, all documents and records shall be returned to us at supplier's cost.
- 15.3 We shall retain industrial property rights over all documents handed over to the supplier.
- 15.4 The supplier shall treat the enquiry, order and the associated work as a commercial secret and as confidential. The supplier shall be liable for any losses we may incur due to a violation of these duties.
- 15.5 Goods produced according to our specifications, drawings and models must not be disclosed to any third party without our approval in writing.
- 15.6 All know-how acquired from us, and all other commercial and operational secrets that have come to the knowledge of the supplier during execution of the job, shall be kept secret and must not be disclosed to any third party.
- 15.7 Our express permission must be obtained in writing before any reference is made to our existing commercial relationship in informational or promotional material.
- 15.8 The same undertaking under subparagraphs 15.1-15.7 shall be imposed on subcontractors.

16. Assignment

The supplier shall not transfer or assign his essential contractual obligations to a third party without our express written permission.

17. Applicable Law / Jurisdiction

- 17.1 The contract shall be governed exclusively by Austria law. Use of the UN Convention on the International Sale of Goods of 11 April 1980 shall be excluded.
- 17.2 Where the supplier has a registered office in Austria, the court of jurisdiction shall be Wels. In this case though, we shall also be entitled to institute proceedings against the supplier at his court of jurisdiction. Where the supplier has his permanent registered office outside Austria, any disputes arising from, or in connection with, the present contract shall be finally settled by the rules of arbitration of the international chamber of commerce by a judge appointed by the relevant arbitration body. In this case the Swiss substantive law shall apply. The venue of the court of arbitration is Zurich. The negotiation language is English.