

1. Preamble

All purchase orders of Thöni Industriebetriebe GmbH ("buyer") shall be exclusively subject to these terms of purchase which form an integral part of the purchase order. The seller shall be bound to the terms of purchase including but not limited to all amendments, additions, specifications and other documents which form a part of the purchase order.

The terms of purchase shall have priority over all other documents explicitly stated in the purchase order and forming an integral part of the purchase order, unless the order of the documents is explicitly arranged differently in the purchase order. The seller's terms of sale shall not apply; any amendment of these terms must be made in written form.

2. Conclusion of contract

All purchase orders must be placed in written form. Amendments, additions, verbally placed orders or ancillary agreements shall only become binding in written form.

In case of written order confirmation, it must be submitted by the seller within five days from the receipt of the order at the seller; the order shall be deemed as confirmed even without written order confirmation if the seller does not object in written form within five days.

The buyer shall have the right to cancel the order in written form within a period of five days without giving reasons; thus the order shall be deemed as not placed.

Order amounts of less than or equal to one hundred ordering units shall in any case be deemed as fixed amounts. Overdeliveries or underdeliveries must be duly announced by the seller and require the explicit consent of the buyer.

3. Prices and payment

All prices shall be fixed prices and shall not be subject to any changes. The sales price shall include any taxes, fees and charges accumulating for the goods or services.

The seller must classify all prices according to goods, packaging and transport (including insurance) whereas the labelling of goods or delivery units and packaging must be effected according to the specifications of the buyer.

Unless otherwise agreed in written form, the prices listed shall include packaging free and unloaded to the place of delivery of the buyer.

The buyer shall be entitled to express changes of the delivered goods in terms of construction and design in so far as reasonably practicable without resulting in changed purchase prices.

Payments shall be effected according to the agreed terms of payment. Unless such terms of payment are not agreed in the order in written form, payment shall be effected within 30 days after the due receipt of delivery and invoice (date of the receipt stamp of the invoice) with a discount of 3% or within 60 days net.

All documents, delivery notes and invoices of the seller must in any case include the SAP order and item number of the buyer. The buyer shall be entitled to reject the invoice of the seller if it does not state the order or item number of the buyer or if it is incorrect in any other way. Possible delays in payment resulting hereof shall be charged to the seller. The buyer must not be charged any kind of fees, unless the buyer would have explicitly agreed accordingly in written form.

4. Delivery and transfer of ownership

4.1 If the seller fails to deliver the goods or services in due time, the buyer shall be entitled to claim for liquidated damages (contractual penalty) as specified in the purchase order for the duration of the delay. This does not exclude the assertion of a claim for higher damages as may be, exceeding the amount defined in the purchase order.

4.2 If no liquidated damages were agreed, the buyer shall be entitled to the compensation of the entire damage resulting from the service of the seller not rendered on time.

4.3 Unless specified otherwise in the order, the following provisions shall apply:

Goods transports from places within the EU to places within the EU shall be delivered DDP and/or DAP of the indicated place whereas the transfer of property shall be effected at the loading point of the buyer;

goods transports within the country of origin shall be delivered DDP and/or DAP of the indicated place whereas the transfer of property shall be effected at the loading point of the buyer.

The seller shall be obliged in any case to inform the buyer about the country of origin including goods traffic number of all goods delivered according to the order, including sufficient details to be able to comply with the terms of any possible applicable agreements on trade or tariff preferences.

Furthermore, the buyer shall be entitled to organise transport themselves. In such a case, the transfer of property shall be EXW of the seller.

EXW shall only apply if the transport is organised by the buyer or if the buyer explicitly agrees in written form in case that transport is organised by the seller, whereas the seller must inform the buyer about the cheapest transport organisation (including insurance) for the buyer.

Goods which are delivered to the buyer before the scheduled time may be returned to the seller at the seller's cost. If the seller does not comply with this specification of the buyer, all transport costs resulting hereof shall be at the cost of the seller and the buyer shall be entitled to make use of any other legal remedies provided according to law or equity.

Otherwise, the Incoterms of the International Chamber of Commerce (ICC) in the version valid at the date of contract conclusion shall apply.

5. Shipping of dangerous goods

The regulations specific to the mode of transport used for transporting dangerous goods must be strictly observed. The seller is liable for all damages and penalties resulting from failure to observe the statutory regulations. As the manufacturer or supplier of dangerous substances in the context of the dangerous goods regulations, the seller shall be responsible for the classification, labelling and packaging as well as the shipper within the context of the applicable dangerous goods regulations for selecting the permitted mode of transport and, if applicable, the route.

Furthermore, as the shipper/sender or transport contractor, the seller shall observe the dangerous goods regulations, information and labelling requirements, declarations, packaging and transport regulations, accident and safety data sheets, with respect to both the carrier and the buyer, and shall agree to provide the necessary transport documents and forward them to the carrier. Additionally, the dangerous goods classification shall be strictly stated on the delivery note. The purchaser/subcontractor responsible for the buyer shall be informed about the dangerous goods classification before any purchase and before shipment takes place. The packages (individual packings, combination packagings) and intermediate bulk containers shall only use type-tested and approved packagings. In the case that tanks and tank containers are used, these must comply with the relevant construction and equipment regulations. The vehicles used must comply with the construction and type approvals for transporting dangerous goods. The regulations mentioned in this section must comply with the legal provisions valid at the time of the purchase and transport.

6. Property of the buyer

Unless no other written agreement has been made, all material and immaterial goods – including but not being limited to any kind of information or data, tools, materials, drawings, computer software, knowhow, documents, devices or equipment – being provided to the seller by the buyer or having been paid separately by the buyer, as well as any replacement for these goods or any materials being applied or attached to these goods shall be and remain property of the buyer.

The seller shall be entitled to use the goods which are property of the buyer exclusively for the accomplishment of the order of the buyer and must not use them in any case for other purposes, hand them over to third parties or copy them.

All rights concerning ideas, inventions, creations, strategies, plans and data which arise during or as a result of the rendering of services of the seller according to the order including all patent rights, copy rights, rights of protected information, database rights, trademark rights and other immaterial goods rights are the exclusive property of the buyer. All such intellectual property which can be protected by intangible property rights shall be deemed as work created by the buyer, or the buyer shall be assigned the status of "first owner" with regard to the work according to the intangible goods rights applied at the place of origin.

The buyer shall be entitled to verify all relevant documents of the seller in order to check the compliance with these terms, and to request the presentation of all relevant certificates and documentations of the seller.

7. Drawings

The possible inspection or approval of drawings by the buyer shall support the seller and does not exempt the seller from his responsibility to comply with all requirements of the order.

8. Rejection

If it shall turn out before the expiration of the period of warranty that part of the services rendered within the scope of order is inadequate or does not comply with the requirements of the order in any other way (including the applicable drawings and specifications) – irrespective of whether the deficiency or the non-compliance with the requirements is a result of the sphere of the seller or of a direct or indirect supplier -, the buyer shall have the following options in addition to the rights of which they are entitled according to law or contract including the claim for damages at their own choice and at their sole discretion and at the cost of the seller:

- a) to rescind the order without the seller having any resulting claims against the buyer,
- b) to reject or return the concerned goods or services,
- c) to take measures in order to remedy all deficiencies and/or to ensure that the goods will meet all requirements.

All resulting reasonable costs and other expenses (including costs for material, work and handling and any required additional machining or other ancillary services, fees etc.) shall be at the expense of the seller. The buyer shall be entitled to hold back the entire payment or parts of the payment and/or request the seller to immediately remedy the inadequately delivered part of the service and/or to replace the goods which do not comply with the order with goods which comply with the order.

9. Warranty

9.1 The seller shall guarantee that all goods delivered and all services rendered according to the order, regardless whether delivered or rendered by the seller or a direct or indirect supplier of the seller, shall be free of defects and encumbrances including among others property rights.

Furthermore, the seller shall guarantee that all delivered goods – including all integral parts and components – are new and that both goods and services comply with the industry standard.

The seller shall in any case carry out a final check before the dispatch of the ordered goods and shall be obliged to keep according recordings which must be handed over to the buyer on request.

If the contracting parties agreed on certain dimensions, the process capability of the goods must be ensured, recorded within the framework of test logs and handed over to the buyer on request.

The seller shall agree that the buyer will check the received goods in terms of quantity upon their receipt at the receiving station and in terms of quality upon their processing and/or application, whereas the quantitative and qualitative schedules shall be deemed as relevant for the timeliness of possible complaints.

Any attempt of the seller to exclude or limit these warranty provisions shall neither be valid nor effective.

9.2 The warranty period shall start after the buyer has checked delivery or service as per 8.1 with commissioning (approval by the approval protocol) and shall last for 24 months from commissioning, complete delivery or complete service. The buyer must inform the seller immediately in written form about any deficiencies.

9.3 Warranty shall apply for the buyer, their legal successor and transferee as well as for the users of the ordered goods and services. If goods or services turn out to be defective during the warranty period, the buyer shall be entitled beyond the rights available at law, contract or equity upon their own choice and upon their sole discretion and at the expense of the seller

- a) to reject or return the concerned goods or services,
- b) to request the seller to remove and take away non-compliant goods and deliver goods which comply with all requirements included herein, and/or
- c) to take any required measures in order to remedy all deficiencies and/or to ensure that the goods and services will meet all requirements included herein.

All costs and other expenses incurred by the buyer – including costs for material, work and dispatch, costs for required additional machining or any other additional services shall solely be born by the seller. After the removal of defects, the warranty period shall be extended by a further 24 months.

10. Delay

In case of a delay of not more than one week which is not due to a fault (intent or negligence) of the seller and/or his suppliers, the buyer shall be entitled to cancel the whole order or parts of the order after having informed the seller about the delay in written form, if

- a) the seller does not fulfil delivery within the determined deadline or within the extended deadline granted by the buyer in written form,
- b) the progress made by the seller is so insufficient that the fulfilment of the order is at risk following the opinion of the buyer, or
- c) the seller does not comply with any of the terms of the order.

Such cancellation will be effective if the seller fails to remedy the concerned non-compliance within a reasonable one-time period set by the buyer.

In case of cancellation, the buyer is entitled to make a replacement purchase at reasonable terms at the cost of the seller.

In any case, the seller shall be liable for any costs, expenses and damages resulting from non-compliance with the order, regardless whether the buyer has cancelled or extended delivery time.

If the seller anticipates for any reason that it will be difficult to meet the requested delivery date or any other requirement of the order, he must inform the buyer immediately in written form.

11. Insolvency / persistent delay

If the seller stops the operation of their usual business or if they fail to meet their liabilities when due, the buyer shall be entitled to cancel the order immediately without being subject to liability, if this is permissible according to applicable right. The same applies for the opening of insolvency proceedings against the assets of the seller or rejection of a respective due to lack of funds. This does not apply for goods or services which will be completely delivered, rendered and assumed within a reasonable deadline after cancellation and have to be paid by the buyer at the ordered price.

12. Indemnification and insurance

It is expressly agreed that the seller shall pay compensation to the buyer within the framework of legal directives for the injury of persons, the damages of goods which are not subject matter of the contract, for miscellaneous damages and for loss of profit if the circumstances of each case are proof of the fault of the seller (even slight fault).

The seller must provide adequate insurance with regard to the risks described above.

13. Assignments and subcontracting

The seller may only assign the order or related rights including payment claims (including the assignment due to change of ownership or changed ownership structures) upon the prior written consent of the buyer.

14. Confidential or protected information and publications

The seller shall be obliged to treat any technical, process-related, protected or economical information resulting from the data provided to the buyer in connection with the order with strictest confidence. Any form of disclosure of information shall only be permitted upon the explicit written consent of the buyer. The same applies for publications in press, photos and any related information.

The seller shall be obliged to immediately return any information provided by the buyer – whether in the form of data carriers, drawings, specifications, photos and the like - after the completion of the order.

The seller shall still be obliged to treat any information received with strict confidence, irrespective of the completion of the order for an indefinite and unrestricted period.

15. Intellectual property

The seller shall be obliged to defend the buyer with regard to all costs and expenses and must hold them harmless and indemnify them for all costs and expenses arising in connection with claims, legal disputes or other proceedings which might be opened against the buyer or their customer due to a claimed infringement of patent law, copyright law or trademark law, business secrets or other third party's intellectual property rights of any article or device or part.

16. Securities

If securities are required at any time during the business relation, they must be provided in the form of bank guarantees. These are exclusively abstract declarations of a bank guarantee which can be withdrawn by first presentation. The buyer shall be entitled to reject bank guarantees of banks having a reasonably doubted creditworthiness.

17. Applicable law

Unless otherwise stated in the order or unless the parties did not make any other written agreements concerning the order, the order and its interpretation are subject to Austrian law in every respect.

18. Place of jurisdiction

The place of jurisdiction for all disputes arising directly or indirectly from the contract shall be the Austrian court relevant for the head office of the buyer.

19. Severability clause

Should individual provisions of these terms and conditions of purchase be or become invalid, the effectiveness of all other provisions shall not be affected and shall remain legally binding.

Telfs, 23.04.2018