

General Purchasing Conditions



In these General Purchasing Conditions Benninger AG, Benninger Zell GmbH and Küsters Textile GmbH are referred to as "the Customer" and their contractual partners as "the Contractor".

1. SCOPE OF VALIDITY

- 1.1. Orders of the Customer for deliveries and/or services shall be made in accordance with these GENERAL PURCHASING CONDITIONS if no other deviating agreements are made. All agreements of the contracting parties that deviate from these GENERAL PURCHASING CONDITIONS are only valid if made in writing.
- 1.2. If the Customer places an order on behalf of and to the account of a third party, these GENERAL PURCHASING CONDITIONS shall apply in the contractual relationship between the third party and the Contractor.
- 1.3. These GENERAL PURCHASING CONDITIONS shall apply only to businesses as defined in Article 310 of the German Civil Code (BGB). With regard to the Contractor, they shall also apply to all future transactions with the Customer or the third party they represent.
- 1.4. In the event of a difference in interpretation between the German text and a text in another language, the German text shall apply.
- 1.5. Any deviating business/purchasing terms and conditions of the Contractor are expressly rejected.

2. ORDERS

- 2.1. Binding orders for supplies and services are made exclusively on the basis of written orders from the Customer. Verbal orders are also only valid when confirmed by the Customer in writing.
- 2.2. Any supply or service terms and conditions of the Contractor that deviate from the terms and conditions of the Customer shall only be binding for the Customer, even if reference is made to such terms and conditions in a contractual statement of the Contractor, if they are expressly confirmed in writing by the Customer.
- 2.3. If the Contractor does not object to the Customer's terms and conditions within one week after receipt of the order, they shall be deemed accepted by the Contractor at the latest upon commencement of the execution of the order; the Contractor has been specifically informed of this legal consequence in the order. The Customer shall be entitled at any time, after prior notification, to inspect the progress of work and issue acceptance certificates at the Contractor's premises (preliminary acceptance), as well as to audit the Contractor.

3. SUPPLIES AND SERVICES

- 3.1. Agreed supply and service deadlines are binding. Any unilateral additions to deadlines of the Contractor which terminate or call their binding character into question are invalid.
- 3.2. The order documents (order confirmation, delivery note, shipping documents and invoice) must state the order date, order number with the associated item number, consignment number and the customer's material number. Shipment notifications shall be supplied in duplicate immediately upon clearance of a shipment. The scope of supply also includes instructions for assembly, use and operation as well as spare parts lists or other documents required for the intended use or prescribed by law. The goods must be packaged in a customary manner or at the request of the Customer with special packaging according to their instructions.
- 3.3. In the event of a delay in supply or the execution of services, the Customer shall be entitled – irrespective of any further claims for damages – to claim 0.5% of the price agreed for the delayed supplies or services for each commenced week of delay, but not

more than 5%, as a contractual penalty. The Customer is obliged to declare the reservation of the contractual penalty to the Contractor within ten (10) working days at the latest, calculated from the receipt of the delayed supplies or services. The Customer reserves the right to assert further legal claims.

3.4. The Contractor is obliged to inform the Customer of any missed deadlines without delay.

In the event of default, the Customer is entitled to procure a replacement after expiry of a reasonable grace period which they have specified or, in urgent cases when it is no longer possible to specify a grace period, after informing the Supplier. The Contractor shall reimburse the Customer for additional costs and any direct and indirect damages resulting from a delay in supply, for example costs of express delivery, the Customer's internal additional expenses, all damages claimed by the client or third parties against the Customer, contractual penalties etc.

3.5. Early deliveries or services require the consent of the Customer and shall have no effect on payment dates that would have applied if the supplies or services had been provided on time.

4. PRICES AND TERMS OF PAYMENT

- 4.1. Prices must always be accepted in writing by the Customer. The agreed prices are fixed prices and shall remain valid even in the event of increases in costing elements occurring during the performance of the contract, such as increases in material costs and wages.
- 4.2. The agreed prices shall include as final prices all ancillary services to be rendered by the Contractor in connection with the supplies or services, if any, as well as any ancillary costs and the costs of all parts required for proper execution and proper functioning of a supplied item, which, even if they are not listed separately in the offer and/or the order, shall always be included in the scope of supply.
- 4.3. The prices shall apply for delivery to the Customer's premises or to the destination specified by the Customer, including all testing and acceptance costs, any packaging, any transport insurance and the costs of unloading and transport on the construction site.
- 4.4. If the Contractor's services are ordered by the Customer at an hourly rate, performance records (timesheets) shall require the countersignature of the Customer's staff who are authorised accordingly. The performance records shall be attached to the invoices.
- 4.5. Invoices shall be accompanied by delivery notes showing, in the event of forwarding orders, the arrival and departure times confirmed by the Customer's authorised staff.
- 4.6. The Customer shall pay written invoices which shall be submitted to them after supplies or services have been effected, but not at the same time, separately for each order, stating the order date, order number with the corresponding item number, consignment number as well as the material number, within one month after the first of the month following delivery, with a 3% discount, or within sixty (60) days net by means of payment of their choice.

5. RISK AND ACCEPTANCE

- 5.1. For supplies and services the risk shall not pass to the Customer until the goods have been properly delivered or the services provided and have been accepted at the Customer's premises or at any other destination specified by the Customer.
- 5.2. The Contractor is obliged to perform an outgoing goods inspection.

With regard to hidden defects, the acceptance of supplies and services by the Customer shall be made subject to the reservation of

any defects and other claims with the proviso that the Customer shall remain entitled to provide notification of defects in supplies after discovery of such defects in accordance with Section 377 (3) of the German Commercial Code (HGB) for four (4) weeks.

5.3. The Customer is not obliged to store rejected delivery or service items. In all such cases, the risk and costs for storage shall borne by the Contractor.

6. OFFSETTING/REFUSAL OF PERFORMANCE/ASSIGNMENT

6.1. The Contractor shall only be entitled to offset claims that have been acknowledged or have become res judicata.

6.2. Rights to refuse performance shall be excluded unless either the Contractor proves that they are based on gross breaches of contract by the Customer or the counterclaim on which the right to refuse performance is based is undisputed, legally established or ready for decision.

6.3. The assignment of existing claims against the Customer as well as collection by third parties are excluded.

7. RIGHTS OF THE CUSTOMER IN THE EVENT OF DEFECTS

7.1. The Contractor guarantees – in the sense of a dependent guarantee of durability for the duration of the limitation period – the proper condition of the supplied goods, in particular the use of the most suitable material and perfect functionality, as well as the proper and professional execution of the ordered services. The supplies and/or services shall comply with the recognised rules of technology, the statutory and/or official regulations – in particular the safety regulations –, any relevant guidelines of the professional associations – in particular the applicable CE and DIN standards as well as VDE regulations – as well as any supply and/or service specifications of the Customer and the place and purpose of use presumed by the Customer, the timely determination of which shall be the responsibility of the Contractor.

7.2. Claims for defects of the Customer with regard to supplies and/or services of the Contractor shall become statute-barred after the expiry of two (2) years. The limitation period shall commence at the time of delivery or acceptance, as the case may be, which in the case of supplies for plants to be constructed by the Customer shall be the acceptance of the respective plant by the Customer's client. In the case of partial deliveries, however, the warranty period shall end no later than thirty-six (36) months after actual delivery without complaint to the Customer or completion and transfer to the Customer.

7.3. During the limitation period the rights of the Customer in respect of any defect discovered in the supplies or services shall be determined in accordance with the statutory provisions, whereby, depending on the subject of the order, the sales law or the law on contracts for work and services shall apply. However, even if the law on contracts for work and services is applied, the Customer shall be entitled, within the statutory limits of what is reasonable for the Contractor, and irrespective of any other claims for defects, to demand either rectification of the defect or new production of the work within the framework of subsequent performance depending on their choice. In all cases of subsequent performance, any associated additional costs, in particular dismantling and installation costs, shall be borne by the Contractor.

Furthermore, after unsuccessful expiry of a reasonable deadline or – if setting a deadline is no longer possible due to particular urgency – after informing the Contractor, the Customer shall be entitled to rectify the defect themselves, to have it remedied by a third party or to procure a replacement elsewhere; the Contractor shall bear any related costs incurred.

7.4. Even if the sales law is applied, the statutory provisions of the contract for work and services shall apply accordingly with regard to the Customer's own rectification of defects.

8. LIABILITY AND INSURANCE

8.1. The contractual and legal liability of the Contractor shall be governed by the statutory provisions with the proviso that all third parties involved in the execution of the order on the part of the Contractor shall be deemed to be the Contractor's vicarious agents.

8.2. The Contractor shall free the Customer from any claims of third parties which may be asserted against the Customer in connection with the execution of the order by the Contractor or their vicarious agents or assistants, insofar as the Contractor themselves are liable to the third party in the external relationship, to the extent that the Customer is not liable in the internal relationship between the parties. This shall apply in particular if a claim is made against the Customer on the basis of manufacturer's liability and the Contractor's supplies or services were the cause of the third-party damage.

8.3. The Contractor is obliged to cover their liability risk arising from the contract concluded with the Customer by taking out adequate insurance and to provide the Customer with proof of this by submitting the insurance policy upon request.

9. RIGHTS OF THIRD PARTIES

The Contractor warrants that the supplies and services are free from third party rights and, in particular, that no third party property rights are infringed by the resale, use or installation of supplied items or services. In the event of infringement of third party property rights, the Contractor is obliged to ensure the supply or service to the Customer by satisfying the holder of the right; the Contractor shall free the Customer from any claims for compensation by third parties.

SAFETY REGULATIONS

The supplied goods must comply with the applicable safety regulations, in particular the relevant statutory work and accident prevention regulations, the regulations of the Machine Protection Act, the laws and ordinances on noise protection and environmental protection as well as the accident prevention regulations and emission protection regulations of the respective employers' liability insurance association as well as the corresponding regulations at the destination (location of the client of the Customer).

10. NON-DISCLOSURE

The Contractor undertakes to keep secret all technical and commercial information of which they become aware in the course of the execution of the order – including and in particular such information relating to the respective client of the Customer and the existing contractual relationship with these – and to make such information available exclusively to their employees or other vicarious agents involved in the execution of the order and to oblige such third parties to maintain secrecy in the same manner subject to the proviso that this obligation shall also apply beyond the termination of the respective employment or other contractual relationship. Subject to special provisions in individual cases (e.g. confidentiality for an unlimited period of time in accordance with the Customer's order), the non-disclosure obligation shall apply for two (2) years from the date of delivery or completion of the work for an order, whereby in the latter case the date of the acceptance declaration shall be decisive.

11. RIGHTS OF USE AND PROTECTION

11.1. Documents of any kind such as samples, drawings, models and the like which the Customer makes available to the Contractor shall remain the property of the Customer.

Upon delivery of – even partial – work results of an order, the Contractor shall transfer to the Customer an exclusive and gratuitous

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right of use to the work results, unrestricted in terms of space, time and content; all documents compiled by the Contractor shall be handed over to the Customer as their sole property.

11.2. When so instructed by the Customer, the Contractor shall apply for national and/or international industrial property rights on the basis of the know-how acquired during execution of the order; the costs shall be borne by the Customer. The Contractor shall transfer any industrial property rights acquired as a result to the Customer without delay and free of charge.

11.3. When so instructed by the Customer, the Contractor undertakes to make use of inventions or operational improvements of their employees which are related to the execution of the order for the Customer, in accordance with the Employee Inventions Act, and to transfer these inventions or operational improvements to the Customer or to make them available to the Customer for exclusive use; the Customer shall reimburse the Contractor for any remuneration payable by the Contractor to their employees in accordance with the Employee Inventions Act.

11.4. The Contractor undertakes to inform the Customer in writing without delay of any new know-how gained during execution of the order as well as inventions or operational improvements made by their employees.

PROVISION OF MATERIALS

Materials provided by the Customer remain the property of the Customer. The materials provided shall be stored clearly and separately and marked as the property of the Customer, shall be adequately insured against fire, water and theft at the Contractor's expense and may only be used as intended. Unused materials shall be returned to the Customer with the delivery of the manufactured goods.

12. ADVERTISING

Any publication – in particular advertising – of objects related to the execution of the order in speech, text, visual or audio form by the Contractor or their vicarious agents or assistants requires the prior written consent of the Customer; the Contractor shall obligate their vicarious agents or assistants accordingly.

13. PLACE OF PERFORMANCE AND JURISDICTION

13.1. The place of performance for supplies and services of the Contractor shall be the registered offices of the Customer or – in the case of Art. 1.2. – the registered office of the third party, unless the contracting parties have agreed on a different place of performance. The place of performance for payments is Zittau or – in the case of Art. 1.2. – the registered offices of the third party.

13.2. The exclusive place of jurisdiction for registered traders is the registered office of the Customer.

14. WRITTEN FORM

Amendments and supplements to the order must be made in writing, as must all legally relevant declarations relating to it.

15. APPLICABLE LAW

German law shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods of 11/04/1980.

Validity: May 2022