

General Purchasing Conditions of Benninger Zell GmbH
Status January 2020

1. Validity

Unless otherwise agreed in writing, exclusively these Purchasing Conditions shall apply to all orders of Benninger Zell GmbH. Conditions of the Supplier conflicting with or differing from these Purchasing Conditions shall apply only subject to our express written consent to same. These Purchasing Conditions shall apply exclusively even if we accept the supplier's delivery without reservation, despite being aware of the supplier's contrary or differing conditions. Amendments and additions to these Purchasing Conditions must be made in writing. These Purchasing Conditions shall also apply to all future business with the Supplier.

2. Orders

- 2.1 Only written orders and agreements shall be binding. They can also be effected by remote data transmission or machine-readable data carriers. Verbal agreements with our employees require our written confirmation.
- 2.2 The Supplier shall be obliged to confirm the order in writing within five working days from the order date. If it fails to do so, we shall be entitled to withdraw from our order without any recourse of the Supplier.
- 2.3 We shall be entitled, within reasonable limits, to request changes of the delivery item in design and execution. The effects thereof, particularly with regard to cost increases or decreases and to delivery dates, shall be arranged amicably and reasonably.
- 2.4 The Supplier shall be obliged when receiving the quote documents to check the technical and economic feasibility of the products in accordance with the specified process. By concluding the individual contract or a project contract, it confirms the feasibility. If the Supplier has reservations concerning the implementation requested by us, it shall immediately inform us thereof in writing.

3. Delivery Dates and Deadlines

- 3.1 Agreed delivery dates and deadlines are binding. The compliance with dates and deadlines shall depend on the date the contract goods are received at the delivery address stated by us ("place of destination"). If acceptance has been agreed or is required by law, it shall depend on the declaration of successful acceptance by a person authorized by us for this purpose.
- 3.2 As soon as the Supplier realizes that it will not be able to deliver and/or to perform the service, entirely or partly, in due time, it shall notify us immediately in writing, providing the reasons for and the expected duration of the delay. The Supplier shall, at its expense make every effort to deliver on time.
- 3.3 In the event of delay, we are entitled to request contractual penalties of 0.5% for each completed week, however limited to no more than a total of 5% of the agreed total price of the delivery. The Supplier is free to provide evidence that no damage at all or only considerably lower damage was caused by the delay. We reserve the right to enforce any further legal claims.

The unconditional acceptance of the delayed delivery does not imply a waiver of our mentioned claims. We reserve the right to apply the contract penalty up to final payment.

- 3.4 In the event of delay, we can, on expiry of a reasonable deadline set by us or in urgent cases, when it is no longer possible to set an extension, to procure a replacement from a third party after informing the Supplier.

- 3.5 The Supplier shall reimburse to us all incurred additional costs and direct and indirect damages due to a delay in delivery, e.g. express delivery costs, our internal additional costs, all damages, contractual penalties claimed by the customer, etc.

4. Delivery

- 4.1 Unless expressly otherwise agreed in writing, protection devices shall be part of the scope of delivery. If these are missing at the delivery or after execution of the work, they shall be immediately delivered and installed.
- 4.2 The scope of delivery also includes assembly, use and operating instructions, as well as spare parts lists or any other documentation required for proper use or legally required.

5. Receipt, Acceptance

- 5.1 The Supplier shall not be entitled to deliver more or less than the amount ordered or to make part deliveries.
- 5.2 The Supplier guarantees that it has the capacity to supply the quantities specified by us in accordance with the delivery schedule. The quantities specified in a delivery schedule are not binding for us. We specify the quantities binding for us in the orders or in the delivery call-offs.
- 5.3 If acceptance has been agreed to determine the compliance of the delivery or service with the contract or if the acceptance is required by law, the time of successful acceptance by a person authorized by us for this purpose shall be decisive.
- 5.4 Force majeure, labor disputes (strikes and lockouts), operational interruptions, lack of energy and raw materials, riots and other unforeseeable and unavoidable events in our company or our customers, for which we are not responsible, shall release us for the duration of the disturbance and to the extent of its effect from the performance of our contractual obligations.
- 5.5 We are entitled at any time, upon prior notice, to monitor the progress of work, to carry out acceptance tests in the manufacturing facilities of the Supplier (preliminary acceptance), and to audit the Supplier.

6. Prices, Invoice and Payment

- 6.1 The stipulated prices are fixed prices, packaging included, and are understood DDP place of destination (Incoterms 2020®).
- 6.2 Invoices must always include in full our order number, the order date, our supplier number, the bank details and the order information specified in the purchase order, as well as the declarations of origin. If an invoice does not include or does not include all of this information, it cannot be checked and paid; it will therefore be sent back to the Supplier.
- 6.3 The invoices shall be as far as possible issued as collective invoices and the original (without copies or payment slips) shall be sent to us separately after the delivery.
- 6.4 Unless otherwise agreed, payments are made, at our option, either within 14 days less 3% discount or net within 30 days.
- 6.5 The payment periods shall commence on receipt of the complete delivery of goods according to the contract and receipt of the invoice according to section 6.2 and of the documents according to section 8.3, but in no case before the agreed delivery date. We are entitled to choose the means of payment. In the event of a defect, we are entitled to withhold payment up to a reasonable amount until proper supplementary performance has taken place.

7. Transfer of Risk

The risk is transferred to us according to DDP place of destination (Incoterms 2020®). This also applies if we exceptionally involve our own transport personnel.

If acceptance has been agreed or is required by law, the risk shall be transferred on successful acceptance by a person authorized by us for this purpose.

8. Packaging and Shipping

- 8.1 The goods shall be packed according to custom and usage or, on our request, be packed in a special packaging according to our instructions.
- 8.2 We are entitled to specify the mode of shipment and the carrier. Otherwise, the Supplier shall be obliged to select the suitable mode of shipment most favorable for us.
- 8.3 One copy of shipping documents including our order number, the order date, our supplier number and the order information specified in the purchase order, as well as the declarations of origin, shall be sent to us with the goods. A proforma invoice shall be attached to these shipping documents.
- 8.4 Until the receipt of proper shipping documents and proforma invoice by us the Supplier shall not have complied with its supply commitment. Until such time, we are authorized to store the delivery at the costs and risks of the Supplier.

9. Incoming goods Inspection and Liability for Defects

- 9.1 (a) The Supplier is obliged to perform an outgoing goods inspection.
- After the goods have arrived, we will examine them for obvious defects, identity, shortages, as well as transportation damage. An inspection duty over and above the foregoing shall not apply. We shall notify the Supplier of any defects immediately after their discovery. In this respect, the Supplier shall waive the claim of late notification of defects.
- (b) If the Supplier delivers the products directly to our customer, the Parties shall enter into a different agreement to limit the incoming goods inspection.
- (c) The duty of incoming goods inspection and notification of defects does not exist if acceptance has been agreed or is provided for by law.
- (d) The Supplier shall match this provision with its business liability insurance to make sure it corresponds to its insurance coverage.
- 9.2 The Supplier guarantees that the products are free of material defects and defects of title, that they comply with the state of the art, the applicable laws and protective provisions, the released initial samples and the usual and technical quality assurance standards (e.g. DIN, EN, TÜV, Ex guidelines of BG) at the time of risk transfer. In the event of different definitions of the standards, the German version shall apply.
- 9.3 Our claims for defects shall be governed by the legal provisions, unless otherwise agreed in the provisions below. We are entitled to request, at our option, repair or replacement of the defective products. Furthermore, after the unsuccessful expiry of a reasonable period of extension or - if it is no longer possible to set an extension due to the particular urgency – after informing the Supplier, we shall be entitled to remedy the defect ourselves, to have it remedied by a third party or to procure a replacement otherwise; the costs incurred shall be borne by the Supplier, unless it is not responsible for the defect.
- 9.4 The replacement shall be effected carriage and packing paid to the place of destination. Return dispatches of unusable goods shall be effected at the costs and risk of the Supplier.
- 9.5 Claims for damages become statute barred in 24 months from commissioning, but at the latest in 36 months from delivery or - if so agreed - from the time of acceptance of the product. To the extent that we are also entitled to non-contractual claims for damages because of a defect, the regular statutory limitation period shall apply, unless in individual cases the application of the limitation periods under the law governing the sales of goods gives rise to a longer limitation period.
- 9.6 If the defectiveness of a supplied product only appears after its integration in an item manufactured by us, the Supplier shall bear all expenses for the purpose of repair or replacement at the relevant place of use of the goods. We shall communicate the place of use to the Supplier on request.
- 9.7 If, following notification of defects products are repaired or replaced, the limitation period of section 9.5 relating to these defects recommences anew for these products, unless the rework is insignificant or is an express good will action of the Supplier.

9.8 In the event of frequently occurring damages with the same cause of defect (serial damages), the Supplier shall be obliged to make available as soon as possible parts without defects for series production and for repair or replacement.

9.9 The Supplier is responsible within the framework of the legal prescriptions for measures to avoid damages, in particular for a preventive replacement. In this respect, it shall also bear the costs of a recall action.

10. Third-Party Property Rights

The Supplier guarantees that the use of the goods supplied by it does not infringe - also in the country of use - neither directly nor indirectly any national or foreign intellectual property rights (such as e.g. patents or utility models, other rights or commercial or company secrets of third parties).

In this respect, the Supplier shall release us from any claim of third parties upon first written request. This does not apply insofar as the Supplier manufactures the goods exclusively according to our drawings and models and did not know or was not required to know that manufacturing the goods would result in the violation of third party rights.

11. Liability

11.1 In the event a product liability claim is asserted against us by a customer or any third party, the Supplier shall be obliged to hold us harmless from such claims upon first written request, if and to the extent to which a defect of the product supplied by Supplier caused or contributed to the damage. This however does not apply in the case of fault-based liability, if the Supplier is not responsible for such breach of duty.

11.2 To cover general liability risks, the Supplier shall be obliged to take out a liability insurance including personal injury and damages, as well as recall costs and extended product liability with suitable coverage and maintain it for the duration of the business relationship, as well as for 36 further months thereafter. The Supplier shall furnish upon our request proof of the existence of this insurance coverage.

11.3 The Supplier shall also be obliged to reimburse us for any expenses pursuant to §§ 670, 683 BGB (German Civil Code) or §§ 830, 840, 426 BGB, which arise from or are related to a recall action conducted by us or our customer. We will inform the Supplier of the content and scope of the recall measures to be performed - to the extent possible and reasonable - and allow opportunity for comment. Further legal claims shall remain unaffected.

11.4 Unless otherwise agreed in writing, the Supplier shall mark the products so that they will be durably recognizable as products manufactured by it. The Supplier shall make sure by marking the products and by other traceability measures that, in the event of a defect in the products, it can be immediately determined which other products might be affected

12. Protection Provisions

The goods to be supplied shall meet the requirements of the applicable protection provisions, in particular the relevant work and accident prevention regulations, the provisions of the German Machine Protection Act, the laws and regulations on noise control and environment protection, as well as the accident prevention regulations of the relevant professional

association and the immission control provisions, e.g. of the professional association Textilbekleidung (textile clothing), as well as the corresponding provisions applicable at the place of destination.

13. Samples, Drawings, Means of Production

13.1 Documentation of all kinds, such as samples, drawings, models and the like that we provide to the Supplier or that the Supplier manufactures at our expense shall remain our property or shall pass into our ownership upon manufacturing. We shall hold all rights to these documents. They shall be sent to us free of charge without further request as soon as they are no longer required for executing the order. They are confidential information within the meaning of section 15.1.

13.2 The means of production provided to the Supplier or manufactured according to our specifications may not be copied or sold, transferred by way of security, pledged or otherwise transferred, nor encumbered with third-party rights in any way or used for third parties without our prior express consent in writing. The same applies to the goods manufactured with the aid of these means of production. Means of production are confidential information within the meaning of section 14.1.

14. Confidentiality

14.1 The Supplier undertakes to keep all information that it will obtain consciously or unconsciously from us in connection with the business relationship, e. g. all technical information, company secrets and details of our orders such as e. g. quantities, technical execution, conditions etc., as well as knowledge gained by it from our information ("confidential information") in confidence from third parties.

14.2 The inclusion of our Company in a reference list, the mention of our business relationship or the use of our order for advertising purposes requires our prior written consent.

14.3 Documents, as well as other items of any kind such as for example samples, drawings, tools, models and similar items that we provide to the Supplier shall be returned to us free of charge without further request as soon as they are no longer required for executing the order. Such items may not be used by the Supplier for own purposes nor made accessible to third parties.

14.4 In the event of infringement of this obligation of confidentiality, the Supplier undertakes to pay contractual penalties amounting to 30% of the order value, unless it is not responsible for the infringement. We are furthermore entitled, in the case of particularly severe breaches, to terminate whole of the contractual relationship without notice and without compensation and ask for the refund of possible payments already made. A particularly serious breach is established in particular when the Supplier forwards the confidential information to our competitors.

15. Provision of Material

15.1 Provided materials remain our property. Provided materials shall be stored in a clearly structured manner and separately as our property, sufficiently insured against fire, water and theft at the Supplier's expenses and shall only be used according to their intended purpose. Unused materials shall be returned to us when supplying the manufactured goods.

15.2 Processing or transforming the provided material shall be carried out by the Supplier only in accordance with us and always for us. If the material is processed jointly with other items not belonging to us, we shall acquire co ownership of the new item in the ratio of the value of the provided materials to the other processed items at the time of processing. Apart from this the same shall apply for the item created through processing as for the provided materials.

16. Secondary Obligations

16.1 The Supplier shall be obliged to mark the goods as specified by us.

16.2 He shall be obliged to ensure the supply of spare parts for a duration of at least 10 years from the last series or main delivery.

16.3 If the Supplier intends to stop the production of a product supplied to us, it shall be obliged to inform us in writing at least one year before stopping the production. If our Supplier is a dealer, it shall be obliged to inform us in writing immediately upon knowledge of the discontinuation of the production of the product supplied to us.

17. Assignment

An assignment or pledge of the Supplier's rights under this contract or of claims requires our prior written consent. This does not apply for money claims. We can however effect payment to the Supplier with discharging effect

18. Place of Performance, Jurisdiction and Applicable Law

18.1 The place of performance for all deliveries and services is the place of destination specified by us.

18.2 Jurisdiction is the court competent for the registered office of Benninger; however, we are also entitled to sue in the court competent for the registered office of the Supplier.

18.3 The laws of the Federal Republic of Germany shall apply.

18.4 If a provision of these Conditions or other agreements is or becomes invalid, the validity of the remaining provisions of the contract shall remain unaffected by this.