



General Terms and Conditions of Purchasing Release 12/2020

(for translations purposes only - legally binding is only the german version "Allgemeine Einkaufsbedingungen")

I. General

These General Terms and Conditions of Purchasing (Purchasing Conditions) apply to all purchase contracts, contracts for work and labour, contract for work and materials and any other contracts between the Purchaser and Supplier, unless otherwise agreed in writing. Conditions varying from the Order or Purchasing Conditions are not a component of the Contract and shall not be applicable, even if they were not rejected explicitly in any individual case.

II. Conclusion of Contracts

Orders shall only be considered binding when issued in writing by the Purchaser. Amendments to the Contract, Order or to these Purchasing Conditions have to be made in writing. The requirement for the written form may only be waived in writing.

III. Prices

The prices listed in the Order are binding and DDU (Incoterms 2000). They include the Supplier's obligations under the Contract as well as any and all additional charges, particularly those for packaging, shipping, insurance and customs duties.

IV. Scope of Delivery and Services

1. The Supplier shall transfer to the Purchaser ownership of all technical documentation created in the scope of construction service, and essential documents including that of sub-suppliers, and all others for the new manufacture, maintenance and operation of the delivery and service. These documents shall be formulated in German and correspond to the international system of units (SI).
2. The Supplier shall grant the Purchaser all rights of use required for the use of the supplied item and services by the Purchaser or third parties taking into account any patents, supplementary protection certificates, brands, registered designs etc.
3. The delivery and services to be effected by the Supplier shall be free from the rights of the Supplier or third parties and are to be transferred to the Purchaser for his free use. This includes the Supplier's authorisation to effect repairs and modifications to the supplied item or service and to manufacture spare parts himself or to have such manufactured. The Supplier is to ensure that the Purchaser is excluded from any third party claims based on the infringement of industrial property rights.
4. Approval of drawings and technical documents supplied by the Purchaser or by a classification company does not constitute acceptance in a legal sense.
5. Supplied items based on information, drawings, samples, models or other documentation created by the Purchaser may only be delivered to him and not made accessible to third parties unless the Purchaser provides written authorisation. All documents, in particular samples, models and drawings remain the property of the Purchaser. This also applies to any existing industrial property rights. The documents shall be treated as confidential and must not be made accessible to third parties without the written permission of the Purchaser. The documents, together with any copies, are to be returned to the Purchaser without special request to this effect, after the enquiry or order is completed. Improvements to the item, which at the time the Contract is executed appear possible to the Supplier, shall be communicated to the Purchaser. The Purchaser has the exclusive right to register protected rights for such improvement and to use these commercially.
6. The processing of work orders is done at any time and degree of production on the order of the Purchaser as manufacturer in the sense of § 950 Civil Code. Acquisition of ownership by the Supplier is excluded.
7. Should the agreed scope of performance be diverted from, the Supplier is only then entitled to increase his payment demand or amend the scheduling if a corresponding written supplementary agreement is concluded prior to execution.

V. Quality

The Supplier shall establish and maintain a documented quality assurance system, suitable in form and scope and correspondent to the state-of-the-art. He has to keep records, particularly as concerns his quality inspections and to submit these to the Purchaser on request. The Supplier hereby authorises that his quality assurance system be submitted to quality audits for evaluation of effectiveness by the Purchaser or his Supplier.

VI. Dates and Delay

1. The dates stipulated in the Order are binding. The Purchaser is entitled to reject the goods, should these be delivered in advance of the agreed date.
2. The Supplier is to notify the Purchaser without delay of any reasons, which cause a deadline to be missed. Missed deadlines can lead to significant damage for the Purchaser due to his own obligations vis-à-vis his customers.

3. In the event of delay the Purchaser is permitted to have the not yet effected delivery/service performed by a third party at the Supplier's cost without setting an additional deadline in cases of imminence of danger, where speed is of the essence or for the prevention of further damage.
4. In the event of a delay the Purchaser is entitled to demand a contractual penalty from the Supplier of 0.2 % of the Contract price per calendar day of the delay, but which may not total more than 5 % of the Contract price. This entitlement to a Contract penalty continues to be maintained until the final payment, also where this right is not expressly reserved on the acceptance or approval of the delivery or service. This shall not prejudice the Purchaser's further rights and claims.

VII. Force Majeure

1. Notwithstanding anything to the contrary, if Force Majeure or any effects related thereto, including but not limited to corporate health and safety provisions or measures, action of any governmental or local authorities, traffic or travel restrictions, border closures, import restrictions, port congestions, quarantine, etc., irrespective whether such occurrence should exist prior to or after the effective date, causes, or will cause, any delay or other failure in the performance of the party's obligations under this Contract, this party shall be exempted from liability for any such delay or other failure, and be entitled to an extension of time for any delay suffered, and/or to payment of any additional expenses [reasonably] incurred, as a result of Force Majeure. The Purchaser is entitled to terminate the contract or to place the order to another Supplier.
2. The respective party shall inform the other without undue delay after becoming aware of Force Majeure having an impact on the performance of the party's obligations.

VIII. Delivery and Storage

1. Insofar as not stipulated differently in the Contract, the delivery is to be made to the address stipulated under Clause XV. of these Purchasing Conditions. The following provisions are to be observed:
 - a) The delivery of the item to a receiving location other than that stipulated by the Purchaser does not effect a transfer of risk to the Purchaser, even if the receiving location should accept the delivery. The Supplier shall carry the incremental costs of the Purchaser, caused by the delivery to a location other than that agreed.
 - b) Delivery notes are to be presented in triplicate together with the delivery. This shall include the following information: (1) Purchaser's order number, (2) vendor code or supplier code (3) Material number as per Order, (4) Position number from the Order and any additionally remarks requested on the Order. A notice of dispatch in triplicate including the same information as the delivery note and separately for each order shall be sent to the Purchaser on the day the goods are shipped.
 - c) Part deliveries are to be identified as such. Ordered material test certificates and other test documents are to be delivered together with the supplied item.
 - d) Should the return of packaging materials be contractually agreed, a corresponding and clear identification to this effect shall be included in all delivery papers. If this remark should be omitted the Purchaser shall dispose of the packaging at the Supplier's cost; in this event the Supplier's entitlement to the packaging to be returned expires.
2. The storage of objects belonging to the Supplier required for performing services on the Purchaser's property is permitted in allocated storage areas only. The Supplier assumes full responsibility and risk for these objects.

IX. Subcontracting and Transfer

1. The Supplier may not assign the performance of the Contract either wholly in part to a third party without the prior written permission of the Purchaser. Should the Purchaser furnish such permission, the Supplier remains jointly and severally responsible for the execution of the Contract. Subcontractors of the Supplier are to be named to the Purchaser on request.
2. The Supplier may not transfer claims from this Contract without the written permission of the Purchaser.

X. Cancellation

1. The Purchaser may terminate the Contract in whole or in part without being required to provide a reason. The Purchaser shall pay to the Supplier such portion of the agreed Contract price to the value of the supplies and services performed, acquired materials and work done. The Purchaser may acquire materials and/or unfinished products including any special equipment to reasonable conditions.
2. Further claims of the Supplier than those stipulated above are hereby excluded.

XI. Invoicing, Payment and Offsetting

1. Information identical to that on the delivery note shall be provided on the invoice and in all written correspondence. The invoice must also include the following information: (1) Date of delivery or service performed, (2) Charges for the delivery or service and (3) The tax amount allocated to the charges, where applicable.



**General Terms and Conditions of Purchasing
Release 12/2020**

(for translations purposes only - legally binding is only the german version "Allgemeine Einkaufsbedingungen")

- 2. Payments shall only be executed following full performance of delivery or service and on receipt of a proper invoice.
Insofar as no contrary agreement is made in the Contract, the price following delivery and service as per Contract and receipt of the invoice as per Contract shall be paid as follows:
60 days term of payment for advance and interim payments as well as 30 Days term of payment for final payments to constructional invoice receipt.
- 3. The Purchaser does not default on his obligation to provide payment prior to the receipt of an arrears notice.
- 4. The Purchaser may offset any claim the Supplier has against the Purchaser with all claims of the Purchaser those of the Supplier.
- 5. The Supplier is entitled to offset only those claims, which are undisputed or legally valid.

XII. Responsibility for Defects and Product Liability

- 1. The Supplier has the unrestricted responsibility to ensure that his deliveries and services possess the agreed condition and are fit for their intended function, as per Contract.
- 2. Divergent to the ruling in § 377 Commercial Code, the Purchaser shall inspect the incoming delivery for apparent defects and to notify the Supplier of such within seven working days, for hidden defects within seven working days after discovery. The timely posting of such notification is sufficient.
- 3. The statutory warranty period for defects shall be applicable. The warranty period shall start on the date of acceptance, but for delivered items, which are installed on ships, the warranty period shall start on the date of acceptance of the ship by the Purchaser's customer at the earliest. For machinery and equipment or parts thereof, the warranty period shall start on the date of initial operation of such equipment at the earliest. Otherwise the warranty period shall start on the date of complete delivery and/or completion of the services in accordance with the contract.
- 4. For repaired and replaced parts, a new warranty period shall start on the date of complete remediation of the defect.
- 5. The Purchaser is entitled to perform all necessary measures to remove defects at the Supplier's expense without prior demand for improvements to be made, where reasons of urgency (e.g. to adhere to a deadline or to prevent damage) so dictate.
- 6. The Purchaser's statutory rights remain hereby unaffected.
- 7. In the event that the Supplier is responsible for a product defect, he shall indemnify and hold harmless the Purchaser from any third party claims at immediate request, if the cause lies in his domain and organisational area and he is so liable in an external relationship.

XIII. Nondisclosure and Data Protection

- 1. The Supplier shall not disclose any operational procedures, facilities, equipment, documents, etc. of the Purchaser or his customers, which become known to him in connection with his activities for the Purchaser, to a third party, also after the offer or contract is completed. The Supplier shall impose the corresponding obligation on his assistants and vicarious Suppliers.
- 2. The Purchaser hereby points out that in accordance with article 13 and 14 of the EU-GDPR he shall store the Supplier's data on the basis of the EU-General Data Protection Regulation.

XIV. Place of Performance, Legal Venue, Applicable Law

- 1. Place of performance for deliveries and services of the Supplier is the receiving location stipulated by the Purchaser. The exclusive legal venue is, insofar as no imperative statutory legal venue exists, the general legal venue for the Purchaser or as according to the choice of the Purchaser the general legal venue of the Supplier.
- 2. For all legal relations between the Purchaser and Supplier the solely applicable law is that of the Federal Republic of Germany, and excluding the United Nations Convention on Contracts on the International Sale of Goods from April 11, 1980 (CISG) in the valid version.

XV. Delivery address / Customs regulations:

Express parcels and goods, Postal packages, Truck Transports :	Emden Werft und Dock GmbH 26725 Emden, Zum Zungenkai
Bulk goods :	26725 Emden, Zum Zungenkai, respective pier at Emden Dockyard
Opening Hours Goods Receiving Department :	Mo. – Fr. 07:15 – 14:30 Uhr Other delivery times only upon prior agreement.

Customs goods - also from customs warehouses and free zones – are only allowed to be delivered after written acceptance of the purchaser. If customs goods will be delivered, the delivery notes must include the country of origin and as well the executed customs clearance. Non-observance of these customs regulations can result in customs penalties for which the supplier is liable to the purchaser.