

# Conditions of Purchase



## 1. General

- 1.1 These Conditions shall be an integral part of the purchase contract. Conflicting or deviating conditions of delivery stipulated by Seller or other reservation made by Seller shall not be deemed accepted unless Buyer has expressly accepted them in writing for a specific order.
- 1.2 Other agreements, amendments or subsidiary agreements shall not be effective unless Buyer has given his written consent thereto.

## 2. Offer

- 2.1 Seller's offer shall cover exactly the quantities and qualities specified in Buyer's inquiry. Any departure therefrom shall be expressly mentioned.
- 2.2 The offer shall be submitted cost-free and without any obligation being imposed on Buyer. Remuneration for cost estimates shall only be paid by special arrangement.

## 3. Order

- 3.1 Orders and alterations to orders shall be made in writing. In case of doubt, verbal agreements or arrangements discussed over the phone shall only be binding if confirmed in writing.
- 3.2 Each order or alteration to an order shall be confirmed by Seller in writing and shall be treated separately in all correspondence.
- 3.3 The following details shall be stated in all correspondence: the purchasing department, the complete order number, the date of the order and Buyer's reference.

## 4. Period for Delivery

- 4.1 The period for delivery shall run from the date of the order. If Seller has reason to assume that he will not be able to meet, or meet in time, all or part of his contractual obligations, he shall inform Buyer thereof immediately, stating the reasons and the likely duration of the delay. If Seller fails to do this, he shall not be entitled to claim exemption from responsibility for the delay on the ground of hindrance.
- 4.2 Should Seller fail to effect delivery within the agreed period, he shall be held liable under the existing legal provisions. This shall not affect Seller's obligation under any other applicable laws and regulations to pay such penalty for delayed delivery as may have been agreed by the parties. If a penalty has been agreed, this can be invoked at any time until the final payment becomes due without reservation.

## 5. Warranty, Liability and Notification of Defects

- 5.1 Seller warrants the goods supplied by him to be free from defects which may reduce their value or affect their usability, to possess the agreed or guaranteed properties, to be suitable for the purpose stipulated in the order, to be in conformity with the generally accepted technical practice, and to conform to the applicable laws and regulations and to the appropriate safety specifications and rules for the protection of workers and prevention of accidents. Should the delivered goods fail to meet any or all of these requirements, Buyer shall be free to demand a remedy of the defect or the supply of defect-free goods, to cancel the contract or reduce the purchase price under the existing legal provisions, or to demand compensation or reimbursement for the needless expenditure.
- If Seller has undertaken to guarantee the properties or durability of the goods supplied, Buyer can in addition lodge a claim under the terms of the guarantee. This shall not apply to defects or damage caused by

- (a) normal wear and tear;  
(b) inappropriate handling by Buyer.

Buyer shall notify Seller of any defects in the delivered goods as soon as they are discovered in the regular course of business. The above provisions shall apply mutatis mutandis to services such as assembly, erection, maintenance, etc.

- 5.2 Unless expressly agreed otherwise, the statutory warranty periods shall apply.
- 5.3 Seller's warranty shall also cover any items manufactured by subcontractors.
- 5.4 If Seller is notified of a defect, the limitation period shall be extended by the time which elapses between such notification and the repair of the defect. If the item supplied by Seller is replaced in whole by a new one, the limitation period shall begin anew. If the item is replaced in part, the warranty period shall begin anew for the new parts.
- 5.5 Goods which are subject to complaint under the warranty shall remain at Buyer's disposal until replacements have been supplied, whereupon they shall become the property of Seller.
- 5.6 In urgent cases, or if Seller defaults or fails in repairing a defect, Buyer may eliminate the defect himself at Seller's expense or avail himself of any of the other warranty rights mentioned in clause 5.1.
- 5.7 Acceptance of Seller's supplies and services by Buyer shall not affect Seller's obligations under the warranty.
- 5.8 Seller shall hold Buyer harmless from any product liability claims or claims arising under the applicable laws and regulations if the defect giving rise to the claim has been caused by Seller or any of Seller's suppliers.
- 5.9 Notwithstanding these provisions Seller shall be liable under the existing legal provisions.

## 6. Tests

If tests are specified for the goods to be supplied, Seller shall bear the costs of such tests, including his own personnel costs, but excluding Buyer's personnel costs.

Seller shall inform Buyer not less than one week in advance of the date on which the goods will be ready for testing and shall agree with him a date for the tests. If the goods are not presented for testing on this date, Buyer's personnel costs shall be borne by Seller.

If any defects are found in the goods which make it necessary to repeat the tests or conduct further tests, Seller shall pay all the personnel costs and other costs entailed. Seller shall also pay all the personnel costs and other costs incurred in connection with testing the materials used by him in executing the order.

## 7. Insurance

- 7.1 Transport insurance shall in all cases be taken out by Buyer.
- 7.2 Seller shall take out at his own expense adequate third party liability insurance to cover damage resulting from services rendered by or goods delivered by or property belonging to him his personnel, or third parties commissioned by him. Seller shall, if so requested, submit to Buyer documents showing the sums insured per occurrence.
- 7.3 The procurement of special assembly/erection insurance in addition to the third party liability insurance mentioned in clause 7.2 shall in each case be subject to agreement between Buyer and Seller.
- 7.4 Any machines, apparatus, etc. supplied to Buyer on loan will be insured by Buyer against the usual risks. Any further liability of Buyer for destruction of such machines, apparatus, etc., or damage thereto, shall be excluded, unless it has been caused willfully or through gross negligence.

## 8. Shipping Requirements

- 8.1 On the day on which the goods are dispatched, Seller shall send Buyer a detailed dispatch note for each consignment separately from the goods and invoice. The goods shall be accompanied by a delivery note and packing slip.

If the goods are sent by ship, the shipping papers and invoice shall state the name of the shipping company and of the ship.

Seller shall choose the mode of transport most favourable and most suitable for Buyer

Seller shall show in full the order reference number and point of unloading specified by Buyer in all dispatch notes, delivery notes, packing slips, bill of lading and invoices, on the outer packaging of the goods and elsewhere if appropriate.

- 8.2 Seller shall always pack, mark and ship dangerous goods in compliance with the appropriate national/international regulations. The accompanying documents shall show not only the risk category but also any further particulars required by the appropriate transport regulations.
- 8.3 Seller shall be liable for any damage caused by non-compliance with these provisions and shall pay any costs incurred thereby. He shall also be responsible for ensuring that these shipping requirements are complied with by subcontractors.
- 8.4 Any consignments of which Buyer is unable to take delivery because of non-compliance with these provisions shall be stored at Seller's expense and risk. Buyer shall have the right to ascertain the contents and condition of such consignments. Tools and erection equipment shall not be loaded together with goods.

## 9. Prices and Conditions

Should Seller reduce his prices or grant better conditions, the prices and conditions effective at the date of delivery shall apply.

## 10. Invoice and Payment

- 10.1 Seller's invoices shall agree with the respective orders in their wording, the order of items and prices.

Any additional or deleted services or supplies shall be stated separately in the invoice.

- 10.2 Periods for payment shall begin on the specified dates, but not before the dates on which the goods and invoices are received.
- 10.3 Payment shall not be deemed to constitute acceptance of conditions and prices. The time of payment shall not affect Seller's warranty obligations or Buyer's right of complaint.

## 11. Documents

- 11.1 All drawings, standards, guidelines, methods of analysis, recipes and other documents supplied by Buyer to Seller for the manufacture of the goods to be supplied, as well as any such documents prepared by Seller according to special instructions from Buyer, shall remain Buyer's property and shall not be used for any other purpose, reproduced or made available to third parties by Seller. Seller shall, if so requested, surrender them, and all copies and duplicates thereof, to Buyer without delay. Buyer reserves the industrial property rights to all documents he supplies to Seller.

Seller shall regard the inquiry and the order and all work in connection therewith as a trade secret and treat them accordingly as confidential. Seller shall be liable for any loss suffered by Buyer because he has failed to fulfil any or all of these obligations.

Seller shall provide Buyer with all documents needed for discussion of the goods or services to be supplied. Such discussion or other involvement of Buyer shall be exclusively within Seller's responsibility and shall not release Seller from any warranty or other obligations.

- 11.2 Seller shall supply to Buyer in good time at no cost to Buyer and without being specially requested to do so, all documents needed by Buyer for the use, erection, installation, processing, storage, operation, servicing, inspection, maintenance or repair of the goods supplied.
- 11.3 Whenever Buyer specifies standards or regulations, the latest version shall apply. Seller shall request Buyer to supply him with his works standards and regulations, as far as they have not already been supplied.

## 12. Incidental Items

Molds, models, tools, films etc. that have been made by Seller to enable him to execute the order shall, on being paid for, become the property of Buyer, even if they remain in Seller's possession. Seller shall be obliged to hand them over to Buyer on request.

## 13. Assembly, Erection, Maintenance, Inspection, Repairs, etc.

- 13.1 If assembly, erection, maintenance, inspection, repairs, etc. are carried out in any of Buyer's factories, such work shall be subject to the safety and conduct regulations for contractors and their personnel working on the premises of Buyer or its affiliates and subsidiaries. These regulations will be supplied at the start of the assembly or erection work, or they should be requested from Buyer's plant security department.
- 13.2 Buyer shall not be liable for any property of Seller or his personnel, which is brought onto Buyer's premises.

## 14. Patent Infringement

Seller shall be liable for any infringement of patents, licenses or protective rights of third parties that may result from the supply or use of the goods. Any license fees payable shall be borne by Seller.

## 15. Advertising Material

Seller shall not refer to his business connection with Buyer in any information or advertising material except with Buyer's written consent.

## 16. Applicable Law, Interpretation of Provisions, etc.

- 16.1 The present Conditions of Purchase and the purchase contract shall be subject to the laws of the jurisdiction where Buyer is registered. Application of the UN Convention on Contracts for the International Sale of Goods dated April 11, 1980, which came into effect on January 1, 1991, shall be excluded.
- 16.2 Customary trade terms shall be interpreted in accordance with the most recent Incoterms.

## 17. Origin of Goods

The goods supplied must conform to the conditions of origin as required by the applicable laws and regulations, unless the order confirmation expressly states otherwise.

## 18. Place of Performance and Jurisdiction

Unless otherwise stipulated in the order, the place of performance shall be the point of delivery specified by Buyer.

The place of jurisdiction shall be the jurisdiction where Buyer is registered.

**1. 一般规定**

- 1.1 本采购条件是采购合同不可分割的组成部分。卖方所规定的一切与本采购条件有冲突或不一致的交付条件或其他保留条款均不被接受，除非买方就特定订单以书面形式明确表示接受。
- 1.2 除买方书面同意外，其他协议、修改或补充协议均无效。

**2. 要约**

- 2.1 卖方的要约应完全符合买方询价中指定的数量和质量。若有任何差异，必须明确说明。
- 2.2 要约的提交不应使买方付出任何成本，且不应使买方设置任何义务。成本估算的酬劳只可通过特殊安排支付。

**3. 订单**

- 3.1 订单的制作和修改均必须以书面形式进行。在有疑问的情况下，口头协议或通过电话讨论得出的安排必须经过书面确认后产生约束力。
- 3.2 每份订单（或对订单的修改）均须由卖方书面确认，且应在所有通信中单独分开处理。
- 3.3 所有通信均应包含以下细节：采购部门、完整的订单号、订单日期以及买方信息。

**4. 交付期限**

- 4.1 交付期限的起始日应为订单日期。若卖方有理由认为其将无法履行（或及时履行）其全部或部分合同义务，卖方应立即通知买方，并说明原因及可能的延迟时间。若卖方未履行上述义务，其将无权以遭遇障碍为理由主张免除因迟延履行而产生的责任。
- 4.2 若卖方未在商定期限内交付，其应承担现有法律条款项下的责任。且该责任的承担不应影响卖方于其他适用法律法规项下支付双方同意的延迟交付罚金的责任。若双方已对罚金达成一致意见，则直到最终付款到期前的任何时间内均可毫无保留地适用罚金。

**5. 质量保证、缺陷责任及缺陷的通知**

- 5.1 卖方保证其供应的货物：不存在可能减损货物价值或妨碍使用的缺陷、拥有双方协议或卖方担保的属性、适合于订单中规定的目的、符合公认的技术惯例、且符合适用的法律法规和有关职工保护和事故防范的适当的安全规格及规定。若被交付的货物未满足部分或全部的上述要求，买方有权要求对缺陷进行补救或另行提供无缺陷货物、撤销合同或降低售价、或要求赔偿或补偿为此产生的无谓支出。

若卖方已对其供应货物的属性或耐久性作出保证，买方可依据该等保证的条款主张额外赔偿。但该等主张不得适用于以下情况造成的缺陷或损毁：

- (a) 正常损耗；
- (b) 买方的不当操作。

若买方在日常运作中发现卖方交付的货物有任何缺陷，应立即通知卖方。上述条款应在加以适当变更后适用于各种服务，诸如安装、建造、维护等。

- 5.2 除非另有约定，法定的保证期限应适用。
- 5.3 卖方的质量保证应涵盖分包商生产的所有物品。
- 5.4 若卖方被告知货物有缺陷，该等告知之后到缺陷被修理完毕期间不应计入质保期。若物品被整体更换，新物品的质保期应重新开始计算。若物品被部分更换，则新更换部分的质保期重新计算。
- 5.5 买方依据质量保证对其提出不满意意见的物品，在更换产品被提供之前应由买方处置；在更换产品被提供给买方后，应为卖方之财产。
- 5.6 若情况紧急，或卖方怠于或未能成功修复产品缺陷，买方可自行消除缺陷，费用由卖方承担；买方亦可行使第 5.1 款中规定的任何其他质保权。
- 5.7 买方对卖方提供产品和服务的接受不应影响卖方的质保义务。
- 5.8 若卖方提供的货物引起任何产品责任的主张或依据适用的法律法规提出的其他权利主张，且导致该等权利主张的缺陷是由卖方或卖方的任何供应商造成的，卖方应使买方免于因该等权利主张而遭受任何损失。
- 5.9 尽管有上述条款的规定，卖方仍应按现有法律规定承担责任。

**6. 测试**

卖方应自行承担对所供应产品进行指定的测试所产生的成本，其中包括其自身的人力成本，但不包括买方的人力成本。

卖方应至少提前一周通知买方货物的计划测试日期，双方应就测试日期达成协议。若货物未能如期提供以供测试，卖方应承担买方的人力成本。

若发现货物存在任何缺陷从而有必要重新或进一步测试，卖方应支付所有的人力成本及其他由此引发的成本。卖方还应支付为履行订单而对其使用的材料进行测试所引发的所有人力成本和其他成本。

**7. 保险**

- 7.1 在任何情况下运输保险应由买方购买。
- 7.2 卖方应自行承担费用购买第三人责任保险，以涵盖因其人员、或由其委任的第三方所提供的服务、交付的货物或拥有的财产而导致的损失。卖方还应要求向买方呈交载明每次事故投保金额的文件。
- 7.3 除 7.2 款中规定的第三人责任保险之外，每份特殊安装/建造保险在购买，应受限于买方与卖方的协议。
- 7.4 买方将为其借用的任何机器、设备等购买普通财产险。买方不再为该等机器、设备等的损坏承担任何其他责任，除非该等损害系因故意或重大过失造成。

**8. 运输要求**

- 8.1 卖方应于货物付运当日向买方发送该次托运的详细的付运信息单，该信息单应与货物和发票分开发送。付运货物应附出货单和装箱单。

若货物系由船运，货运票据及发票应注明船运公司及运输船只的名称。

卖方应选择对买方最有利及最合适的运输方式。

- 卖方应在所有的付运信息单、出货单、装箱单、提单、发票、货物外包装及其他合适位置注明完整的订单号及买方规定的卸货地点。
- 8.2 卖方应始终遵守恰当的国内/国际法规以包装、标注和运输危险货物。所附文件应载明危险类别和相应运输法规所要求载明的其他具体信息。
- 8.3 卖方应承担因违反上述条款而造成的任何损失，并支付由此引发的成本。卖方还应确保其分包商也同样遵守运输要求。
- 8.4 若任何货物的托运因违反上述条款而未能成功交付给买方，该等货物储存的成本和风险均由卖方承担。买方有权确知该等托运的内容及条件。工具和建造设备不得与货物一起装运。

**9. 价款及条件**

若卖方降低价款或提供更优惠的条件，每批货物应适用交付当日有效的价款及条件。

**10. 发票及支付**

- 10.1 卖方所提供发票上的措辞、货物的顺序和价格应与对应的订单相一致。

任何附加或删除的服务或货物应在发票上单独载明。

- 10.2 付款期限应自规定日期起算，但不应早于买方收到货物及发票之日。
- 10.3 价款的支付不应视为对条件和价款的接受。价款的支付时间亦不应影响买方的质量保证义务或卖方的投诉权利。

**11. 文件**

- 11.1 买方为待供应产品的生产而向卖方提供的所有图纸、标准、指导规范、分析方法、配方及其他文件或卖方依据买方的特别指示自行制作的任何该等文件均应被视为机密和买方的财产，卖方不得披露或用作任何其他目的，或复制或提供给第三方。一经买方要求，卖方毫不迟延地将所有上述文件及其复制件或副本交给买方。买方保留对其提供给卖方的所有文件的知识产权。

卖方应将询价、订单及所有与订单有关的工作视为商业秘密并为其保密，若卖方未履行该等义务的全部或部分，其应对买方因此而承担的任何损失负责。

卖方应向买方提供就待提供货物及服务进行讨论所需的所有文件。该等讨论或买方的任何参与应为卖方一人的责任，且不应免除卖方的任何质量保证或其它义务。

- 11.2 卖方应及时向买方提供买方使用、建造、安装、加工、存储、运作、维修、检查、维护或修理所供应货物必须的所有文件，无需买方特别提出要求，也无需买方承担任何费用。
- 11.3 无论买方何时确定标准或规范，上述标准或规范的最新版本总应被适用。若存在未被卖方适用于其工作的标准和规范，卖方应要求买方提供。

**12. 从属物品**

卖方为履行订单而制造的模具、模型、工具、胶片等一经支付价款即成为买方所有的财产（即使为卖方所占有）。卖方有义务经要求将其交给买方。

**13. 安装、建造、维护、检查、修理等**

- 13.1 在任何买方工厂进行的安装、建造、维护、检查、修理等工作应遵守为在买方或其关联公司及子公司所在场所工作的承包商及其人员所制定的安全及操作规范。上述规范应在安装或建造工作开始时被提供，或者要求买方工厂的安全部门提供。
- 13.2 买方不对被带至其所在场所的卖方的任何财产或人员负责。

**14. 专利侵权**

卖方应对货物的供应、买方对货物的使用引起的任何第三方对专利、许可或受保护权利的侵犯负责。卖方应承担所有应付的许可使用费。

**15. 广告材料**

除买方书面同意外，卖方不应在任何资料或广告材料中将其业务与买方联系在一起。

**16. 适用法律、条款的解释等**

- 16.1 现有采购条件和采购合同应受买方注册地法律管辖，且排除 1980 年 4 月 11 日《联合国国际货物销售合同公约》（该公约于 1991 年 1 月 1 日生效）的适用。
- 16.2 惯性的贸易条款应按照最新的《国际贸易术语解释通则》解释。

**17. 货物原产地**

除非在订单确认中明确指明，卖方所提供之货物应符合适用的法律法规规定的原产地条件。

**18. 履行地及管辖**

除订单另有规定外，履行地应为买方指定的交付地点。

司法管辖地应为买方注册地。