

# General Conditions of Purchase of TiBo Metals GmbH & Co. KG

## I. Application

1. These Purchase Conditions (Conditions) shall apply to all our present and future orders for goods and services and to the performance of such orders. Seller's conditions diverging from these Conditions will not be acknowledged unless otherwise stipulated within these Conditions or otherwise agreed in the contract with the Seller. Should we accept the goods not expressly objecting to these Conditions, the Seller may in no case assume our consent with his conditions.
2. Verbal agreements, promises, assurances and guaranties made or given by our staff shall not be binding unless confirmed by us in writing, in written order, by telefax or by e-mail. This also applies to any verbal confirmations made after conclusion of contract.
3. Any offer made to us will be free of charge and not binding to us.
4. If Buyer and Seller agrees trade terms according to Incoterms (ICC) the latest edition of Incoterms are binding.

## II. Prices

1. Unless otherwise agreed the contract prices shall be regarded as fixed prices.
2. In case of prices being agreed "free delivered..." or any "free and franco" clause, the freight charges are included in price. In case of freight forward delivery agreed we only pay for the lowest available freight charges, unless we asked for a specific mode of shipment. Packing costs will only be payed if agreed in writing.

## III. Payment

1. Unless otherwise agreed or unless the Seller's conditions provide for more favourable terms, payment shall be made either within 14 days with 2 % discount or within 60 days without discount.
2. Payment and discount periods shall begin with the receipt of the invoice but not before the receipt of the goods resp. the approval of services and where the contract includes documentation (e.g. test certificates) or similar written material, such periods shall begin only after receipt of such documents as agreed in the contract.
3. Payment shall be made by cheque or by bank remittance. Payment is considered to have been made in time if the cheque has been mailed on the due date or the bank has been charged with the remittance on the due date.
4. We will not be liable for maturity interest. The interest rate for default will be 5pct-points above the Basic Interest Rate. In any case, we may claim and prove a lower default damage than claimed by the Seller.
5. We shall be entitled to all our statutory rights as to the set-off and retention of our claims. We are in particular entitled to refuse payment if and as long any inspection documents for example acc. to EN 10204 have not been supplied.
6. Assignment of claims against us shall require our prior approval.

## IV. Delivery Times / Late Delivery

1. All contractual terms and dates of delivery shall be binding to the Seller. The Seller shall immediately inform us in case of imminent delays and submit to us adequate proposals to remedy the consequences of such delays.
2. Unless otherwise agreed in writing, any contractual terms and dates of delivery shall be considered to be met only if and in so far as the goods have been handed over to us – in case of direct ex works deliveries our buyer - at such dates. This also applies for all agreed documents, despatch notes, material test certification and other certificates which belongs to fulfilment of contract.
3. If and in so far as the Seller defaults in delivery, we shall be entitled to our statutory rights. In particular, we shall have the right to claim damages for non-performance if and in so far as the Seller fails to effect delivery after a reasonable grace period set to him has elapsed. Our right to request delivery of the goods shall expire only after the Seller has compensated us for our damages.
4. The Seller may excuse his default by claiming the lack of any documents to be submitted by us only in such cases where we have, upon the Seller's reminder, failed to provide such documents.

## V. Retention of Title

1. The Seller's terms covering simple retention of title shall be valid subject to the condition that the ownership of the goods shall pass to us on the date of payment for such goods. Hence, the extended title retention forms or the so-called current account retention (Kontokorrentvorbehalt) shall not apply.
2. The Seller may claim return of the goods on the basis of the retention clause only if he has previously withdrawn from the contract.

## **VI. Performance of Deliveries and Passing of Risks**

1. The Seller shall bear the risks of accidental loss and accidental deterioration of the goods until it has been handed over to us at its place of delivery. This provision shall also apply in cases of "free delivery" .
2. Ordered quantities are firm and fix. Partial, excess or short deliveries without our prior written approval are not acceptable. We reserve the right to reject any excess delivery on buyers account.
3. Unless otherwise agreed in writing, the Seller shall bear the costs of packing. Should we, in a given case, agree to bear such costs, the Seller may charge the lowest possible rates only.

## **VII. Termination**

1. We are entitled to terminate the contract in full or partially without giving any reason. In such event we are obligated to pay for all services/deliveries completed up to the point of termination. Procured materials and services or work performed shall be reimbursed appropriate. Section 649 sentence 2 of BGB (German civil code) will apply. Additional and further claims of seller are excluded.
2. We are entitled to terminate the contract with immediate effect for good cause, especially in case of a material deterioration in the financial situation of the seller, seller suspends payment or legal insolvency proceedings for the Seller's assets have been applied. In such event we have the right to take over materials, semi-finished products including any special resources at appropriate terms and conditions.

## **VIII. Declarations of Origin, Customs clearance**

1. The Seller will, upon our demand, provide us with a supplier's declaration regarding the preferential origin of the goods.
2. Where the Seller makes a declaration in regard to the preferential or non-preferential origin of the sold goods, the following terms shall apply:
  - a. The Seller will allow verification through customs authorities and submit all necessary information as well as any required certification.
  - b. The Seller shall compensate us for any damages and losses incurred to us, if and in so far as the competent authorities, due to any deficient certification or impossibility to verify, fail to acknowledge the declared origin, unless he proves that he is not responsible for such consequences.
3. Imported goods to be delivered customs cleared.

## **IX. Warranty Provisions and Statute of Limitations**

1. The Seller shall deliver the goods free of any material and legal defects, especially without any 3rd party property rights. He will warrant in particular that his deliveries and his services comply with the state of the art technical parameters and with any contractual requirements and standards.
2. We - in case of direct ex works deliveries our buyer - will examine the quality and quantity of the goods upon their receipt to the extent both reasonable and technically feasible for us. Any notice of a defect will be deemed to be in time if it reaches the Seller within eight working days by letter, telefax, e-mail or by telephone. Periods for such notices shall not start before we – or in case of ex-works sales (Streckengeschäfte) our buyers – have detected or should have detected the defect.
3. In the event that the goods show a defect, we may exercise our statutory rights. In case of rectification by Seller, such remedy is considered to have failed after the first unsuccessful attempt. We shall have the right to withdraw from the contract also in such cases where a breach of contract is not considered to be material.
4. Where the goods have already been defective at the time the risk has passed to us, we may claim from the Seller also those expenditures in connection with such defect which we are liable to pay to our customer.

5. Any claims arising from defects of the goods will be governed by the statutory limitation periods. Such periods will begin with the timely notification of the defect in accordance with the provisions of No. 2 of this clause. The Seller's warranty for the goods will elapse at the latest ten years after its delivery. Such limitation will not apply in those cases where our claims rely on facts which the Seller knew or should have known and which he did not reveal to us.
6. The Seller hereby assigns to us - on account of performance – the benefit of any claims against his supplier arising from the delivery of deficient goods or of such goods not conforming to the guaranteed characteristics. He will supply us with any documents necessary to enforce such claims.

#### **X. Place of Performance, Jurisdiction, Applicable Law**

1. Unless otherwise agreed to, our warehouse shall be the place of performance for the delivery.
2. Our headoffice shall be the place of jurisdiction. We may, however, sue the Seller at his place of jurisdiction.
3. All legal relationships between us and the Seller shall be governed by the laws of the Federal Republic of Germany supplementing these Purchase Conditions, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).

#### **XI. Applicable Version**

This is a translation of the German version. In cases of uncertainty or conflict, the German version shall prevail.

#### **XII. Separability Clause**

Should individual provisions of the Terms and Conditions of Sales and Delivery be completely or partially illegal, ineffective or invalid, this shall not affect the effectiveness of the other provisions. Both parties undertake that any such provision will be mutually renegotiated in order to find a legal, effective clause of same or similar purpose.