

## **Standard Terms and Conditions of Purchase for Technical Equipment – Freiberger Group (As of November 10, 2020)**

### **1. General**

These General Conditions of Purchase apply to all contracts for orders concluded with the contractor (CO) or contracts concluded in any other form. Deviating general terms and conditions (GTC) of the CO shall only be valid if we have expressly acknowledged their validity in writing (telecommunication via email or fax is sufficient to meet this form). The GTC of CO shall have no effect even if we have not objected to them in individual cases. Acceptance of deliveries, services or their payment does not constitute acceptance of the GTC of CO. Inasmuch as the CO has accepted our General Conditions of Purchase, these shall also apply to future contracts with it.

### **2. Offers, orders**

- 2.1. The preparation of offers or cost estimates is free of charge for us and we are under no obligation to commission them. Should the CO deviate from our request for quotation in an offer, it must expressly point this out. We shall not assume any costs or pay any remuneration for visits, planning and other advance services provided by the CO in connection with the submission of offers, unless this has been agreed separately with the CO in each individual case.
- 2.2. Orders, their alteration or any supplement to them as well as other agreements made in connection with the conclusion of a contract are binding, providing they are declared or confirmed by us in writing.

### **3. Terms of delivery, prices**

In the absence of an agreement or one to the contrary, deliveries from the CO are “DDP Place of Receipt, Incoterms®2010”. The Incoterms clause applies to all deliveries and services which the CO has to perform up to, and at the agreed place of receipt. The delivery shall be accompanied by all evidence and documentation which are to be submitted at the same time. Unless otherwise agreed, prices shall also apply to the place of receipt. They apply to all deliveries and services which the CO has to meet to fulfil its obligations at the agreed place of receipt and include the granting of the rights of use for the intended purpose. Each contracting party shall bear the costs incurred by it in relation to the place of acceptance in the event of an agreed or statutory acceptance.

### **4. Shipping instructions, packaging, transport insurance, origin of goods**

- 4.1. An exact dispatch note/delivery note must be sent to the recipient for each delivery on the day of dispatch. The CO shall be liable for the consequences of incorrect consignment notes being issued culpably. Our order number and the consignee specified in the order must be stated in all shipping documents. In addition to the obligations under "DDP", the CO shall take out transport insurance at its own expense, unless otherwise agreed. Should the delivery concern dangerous goods which are subject to special national and international shipping regulations, it must pack them accordingly, label them and send them to the place of receipt in compliance with the relevant regulations.

- 4.2. Should delivery be subject to rules of origin in accordance with EU preference agreements, the CO shall provide us with the relevant preference certificates, such as a declaration of origin or movement certificate. Otherwise, the CO shall inform us of the non-preferential origin of the goods delivered.
- 4.3. The CO shall take back transport packaging at the place of receipt free of charge.
- 4.4. The CO shall also comply with the aforementioned provisions of this regulation item No. 4 should its delivery and performance obligations not end with delivery, but should it have assumed further obligations, e.g. taken over the installation and we have arranged for acceptance or it is statutory.

## **5. Ownership, commercial property rights, copyright, confidentiality**

- 5.1. Drawings, samples, formulations and other documents and aids which we provide to the CO for the execution of orders shall remain our property or the property of the owner(s) of the IP rights (intellectual property rights). They may only be used for the fulfilment of the respective contract and must be returned to us at any time upon request.
- 5.2. In particular, the CO shall respect copyrights and other industrial property rights to which we or third parties have the rights of use or exploitation. Their use or exploitation is only permitted for the contractually agreed purposes. If it uses third parties to fulfil the contract, it must ensure that they comply with the rights, even if we have given them our permission.
- 5.3. The CO may not use or exploit products manufactured from documents, drawings, models and other supplies designed by us or produced according to our specifications, neither for its own purposes or those of third parties. It may neither offer them to third parties nor deliver them to third parties without our prior written consent.
- 5.4. CO must maintain secrecy about all documents, information on supplies and our other know-how made available to it during the business cooperation and may not disclose or bring any of it to the attention of third parties without our express written consent, except in the case of mandatory disclosure obligations under law or in official cases of regulatory action or court orders. Third parties who are deployed by the CO to fulfil the contract must be expressly obliged to observe confidentiality should it be unavoidable that they have to be made aware of the protected know-how. The CO shall also keep secret all knowledge and results gained through its efforts; this does not apply to those which have already been made publicly accessible without its intervention or become generally known.

## **6. Deadlines, dates**

- 6.1. Receipt of the complete faultless delivery and/or service, together with the documentation and other documents due, at the place of receipt is decisive for the observance of the delivery deadline or the successfully completed acceptance should such have been agreed upon or provided for by law. Any plans, calculations or other documents owed that we have to approve must be handed over to us at such an early stage, even if this has not been expressly agreed, that the contractual deadlines and dates can be met.

6.2. As soon as the CO realises that it cannot meet agreed deadlines and dates in whole or in part, it must inform us immediately, stating the reasons and the expected duration of the delay. Corresponding notifications have no influence on the course of deadlines and dates and do not affect the statutory rights and claims to which we are entitled in the event of default.

**7. Contractual penalty for delay**

Should a contractual penalty have been agreed upon and incurred for the delay caused by the CO, we may claim this until the invoice for the delayed deliveries or services has been paid, without having to reserve the right to do so upon receipt or acceptance, should this have been agreed upon or is statutory.

**8. Partial, excess or short deliveries**

8.1. Partial deliveries or partial services require our prior written consent. Should we accept such even without prior consent, this shall not constitute any premature maturity of payment obligations or consent to the adoption of additional transport costs.

8.2. We reserve the right to accept excess or short deliveries in individual cases. Should excess deliveries be made without prior written consent, we shall be entitled to reject delivery, store it at the expense of the CO or return it.

**9. Risk assumption, acceptance or receipt, force majeure**

9.1. The CO bears the risk of accidental loss or deterioration until the arrival of the delivery at the place of receipt. Should acceptance be statutory or agreed upon, the CO shall bear the risk until we have declared acceptance or a statutory fictitious acceptance has occurred.

9.2. Cases of force majeure and other circumstances beyond our control, such as industrial action, entitle us to postpone acceptance of deliveries and/or services or receipt accordingly.

9.3. Moreover, we are only obliged to accept deliveries if these meet the agreed quality features.

**10. Invoice, payment**

10.1. Invoices are to be submitted separately for each order as a single copy - stating the order data - after complete faultless delivery, completion of services or, in the case of performance-related services, after their acceptance. Invoices without an order number may be returned to the CO without processing.

10.2. Unless otherwise agreed in writing, duly submitted verifiable invoices shall be paid within 14 days with 3 % discount or within 30 days net. The deadline begins with receipt of the invoice, but not before complete faultless performance of contract and/or acceptance should such be provided for by law or contractually agreed.

11. Notice of defects, rights in the case of defects, limitation period
  - 11.1. Insofar as the commercial obligation to examine and give notice of defects applies, our obligation is limited to the inspection of the goods for quantity and identity, externally recognisable transport or packaging damage and random checks of the goods for their essential characteristics, insofar as this is reasonable. Should obvious defects be recognisable, we shall notify the CO immediately, at the latest within 5 days after delivery, and other defects immediately after their discovery. In cases of doubt about quantities, weights and dimensions, the values determined at the place of receipt shall be decisive.
  - 11.2. The CO shall owe faultless deliveries and services. These must have the agreed quality features as well as guaranteed values and properties and fulfil the designated use. The CO shall also be responsible for ensuring that deliveries and services correspond to the current state of the art and the accepted rules of technology and that qualified personnel are employed for services. Deliveries must be equipped with the prescribed safety devices. Safety rules shall be observed by the CO. Relevant regulations concerning environmental protection, hazardous materials, dangerous goods and accident prevention must be complied with as well as requirements for occupational safety. The provisions of the Geräte- und Produktsicherheitsgesetzes [German equipment and product safety act] must be taken into account. The CO shall comply with any special safety and hygiene regulations that have been brought to its attention and are applicable at the place of performance.
  - 11.3. As far as deliveries and services are products, objects or parts which are subject to the Lebensmittel-, Bedarfsgegenstände- und Futtermittelgesetzbuch [German foods, consumer goods and feedstuffs code] or come into contact with such products, their requirements must be fulfilled. Inasmuch as the EU "REACH Regulation" applies to the delivery or components of the delivery, the respective substances must be pre-registered, registered or authorised and other requirements from this, e.g. the submission of a safety data sheet, must be fulfilled.
  - 11.4. The approval of submitted drawings, samples and other records (e.g. documents, functional specification documents) on our part shall not affect the responsibility of the CO for the proper, complete and faultless implementation of the contract.
  - 11.5. In the event of defects and a warranty claim, we shall be entitled to the statutory warranty rights. Should acceptance be contractually agreed upon or statutory, we may refuse to produce a declaration of acceptance and withhold a partial payment linked to it if the service has not been rendered in full or is defective. This shall also apply should an acceptance date have been agreed upon or the CO has set us a deadline for acceptance.
  - 11.6. Insofar as warranty claims exceed the statutory rights in the event of defects, these shall remain unaffected by this. There is a deadline of 36 months for the warranty claims subject to the statute of limitations. This shall commence upon delivery and/or performance or acceptance should such be statutory or agreed upon. Longer statutory limitation periods for the limitation of claims for defects and the duration and course of the statutory regular limitation period shall remain unaffected by this.
  - 11.7. Should a defect appear within the period of limitation, we are entitled, at our own discretion, to demand supplementary performance in the form of repair, subsequent delivery or new production within a reasonable period of time. The place of supplementary performance is the place of receipt, the place of acceptance or, if known to the CO, another final place of shipment. The CO shall bear all expenses incurred by it in connection with

the determination and elimination of defects, including those incurred on our premises, in particular inspection costs, dismantling and reinstallation costs, labour and material costs as well as transport and other costs of supplementary performance in the event of defective parts being replaced.

- 11.8. Should we have installed a part that proves to be defective in another item or attached it to another item in accordance with its type and intended use, the supplier shall reimburse CO for the necessary expenses incurred in the course of subsequent performance should we remove the defective part and install it as a repaired part or a newly delivered part that is free of defects or attach it again to the other item.
- 11.9. Should, in urgent cases, the CO be unavailable and there is a risk of disproportionately high damage, we shall be entitled to remedy the defect at the expense and risk of the CO or to have it remedied by third parties. We shall inform the CO of such measures without delay.
- 11.10. Should the CO fail to remedy the defect within a set reasonable period of grace, or should it have failed or should the period of grace be dispensable, we may withdraw from the contract in accordance with the statutory provisions and claim damages or damages instead of performance, reimbursement of expenses incurred in vain or reduction of the purchase price.

## **12. Granting of rights of use, violation of third party property rights**

The CO shall ensure that we obtain the rights of use required for the contractual purposes without restriction and do not infringe on copyrights, patents or other property rights of third parties should its deliveries and/or services be used accordingly or sold. It indemnifies us from all claims which are legitimately made against us due to infringement of an industrial property right and assumes the costs of safeguarding the rights should these claims be based on a culpable breach of duty on its part. We will inform it immediately in the event of a claim.

## **13. Non-contractual product liability, insurance**

- 13.1. The CO shall indemnify us against all claims arising from product liability should these be attributable to a defect in the delivery and/or service provided by it. Under the same conditions, it shall also be liable for damages incurred by us in such cases as a result of precautionary measures, e.g. public warnings or recalls, which are appropriate in nature and scope and are legally necessary. This shall not affect our right to claim our own damages against the CO.
- 13.2. The CO undertakes to insure corresponding risks to an appropriate amount, to maintain insurance cover as long as a claim is to be expected from us and to demonstrate this to us upon request by presenting its insurance policy.

## **14. Data protection**

The CO is obliged to observe the respective applicable provisions of the EU GDPR and the German data protection law as well as to guarantee and monitor their compliance. Furthermore, it undertakes to treat all information made available to it in connection with this order as strictly confidential and to use it only for the fulfilment of its contractual obligations. Should the transfer of personal data to third parties be necessary for the fulfilment of the contract, the CO must obligate them to comply with the data protection

regulations and to treat the data provided confidentially. The duty of confidentiality does not apply to information which the CO was demonstrably aware of at the time of its receipt or of which it has otherwise gained knowledge.

The CO shall process personal data within the meaning of Art. 4 (1) EU GDPR only within the scope of the order and our instructions as well as a corresponding written agreement on the processing of the order within the meaning of Art. 28 EU GDPR. In particular, the CO shall draw the attention of those employed by it for the performance of the contract to the applicable data protection regulations and shall oblige them to keep them accordingly.

We are entitled to process all data provided to us by the CO, taking into account the applicable data protection regulations, including personal data. Should the CO transmit personal data to us for the purpose of fulfilling the contract, it undertakes to inform the data subjects in accordance with the applicable data protection regulations. We will inform the data subjects should we be obliged to do so under data protection law.

For the purpose of procurement, information about the CO shall be passed on to companies affiliated with us within the meaning of Sections 15 et seqq. of the German Stock Corporation Act (AktG). The CO may object to the disclosure of information or its use after termination of the contract at any time in the future. Statutory retention requirements remain unaffected.

#### **15. References/Advertising**

The CO shall not be entitled to use information about an intended or existing contractual cooperation with it for reference or marketing purposes without our written consent. Taking photos on our properties and premises and the use and/or publication of information of any kind about our company is also prohibited without our written consent, unless these are publicly accessible.

#### **16. Passing on of orders, assignment, retention of title**

- 16.1. The CO may transfer the execution of orders or essential parts thereof to third parties only after our prior written consent.
- 16.2. The CO may only assign its claim against us to third parties or have it collected by third parties with our prior written consent, unless the claims are legally determined or undisputed.
- 16.3. Ownership of deliveries shall pass to us in accordance with the statutory provisions. We object to the CO's reservation of proprietary rights if they go beyond the simple retention of title. In individual cases, they require a prior written agreement. Should it nevertheless occur that subcontractors assert property rights, co-ownership rights or liens with us or have enforcement measures carried out, we will assert a claim against the contractor for all resulting damages incurred by us.

**17. Statutory minimum wage (MiLoG), Arbeitnehmerentendegesetz [German posted workers act] (AEntG), prohibition of illegal employment**

- 17.1. The CO is obligated to ensure that the employees employed by it or its subcontractors for the execution of contracts concluded with us receive the statutory minimum wage or, should the services to be rendered fall within the scope of the application area of a European posting of workers directive and/or the AEntG, in particular in the case of assignments to or from abroad, to ensure that the respective prescribed working conditions be provided, depending on the duration of their assignment. It must also comply with other collective labour agreement regulations as well as statutory obligations to pay contributions to social insurance carriers, employer's liability insurance associations and other institutions and, in the case of subcontractors, ensure that the current requirements are met by them by providing evidence.
- 17.2. Should justified claims be asserted against us on account of non-compliance with the obligations of the CO pursuant to Item 17.1, the CO shall indemnify us from these claims or compensate us for the damage resulting therefrom.
- 17.3. The CO shall refrain from illegal employment or the commission of illegal employment of any kind.

**18. Code of conduct for suppliers**

We observe internationally recognised environmental, labour and social standards. We have described and regulated these in the Code of Conduct, to be download at:

[https://freiberger-pizza.com/cntx\\_uploads/downloads/de/verhaltenskodex\\_der\\_sudzucker-gruppe.pdf](https://freiberger-pizza.com/cntx_uploads/downloads/de/verhaltenskodex_der_sudzucker-gruppe.pdf)

We also expect the CO to acknowledge and take this Code of Conduct into account.

**19. Place of performance, applicable law, jurisdiction**

- 19.1. The place of performance for all obligations of the CO shall be the place of receipt or the place of acceptance should such be agreed or provided for by law.
- 19.2. German law shall apply. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UN Sales Convention; CISG) is excluded.
- 19.3. The place of jurisdiction is Berlin, Germany. We are also entitled, at our discretion, to bring an action against the CO at its general place of jurisdiction.