

Purchasing terms BENZ GmbH Werkzeugsysteme, D-77716

Purchasing terms

These purchasing terms apply to business dealings with companies, legal persons and special estates under public law.

1. General

Our purchasing terms are applicable exclusively; general terms and conditions of the supplier conflicting with or deviating from our purchasing terms are only recognised insofar as we expressly agreed to their validity in writing. Our purchasing terms also apply if we, while being aware of the supplier's contradictory conditions which deviate from our purchasing terms, accept or pay for deliveries of products and supplier services (hereinafter referred to as subject of the contract).

2. Conclusion and variation of contract

2.1 Orders, contracts and delivery schedules, as well as variations and supplements to the same, must be made in writing. Orders and delivery schedules may also take place by remote data transmission or fax.

2.2 Verbal agreements before or at the conclusion of contract require written confirmation of purchase to become valid.

2.3 Verbal agreements following conclusion of the contract, in particular subsequent amendments and supplements to our purchasing terms – including this requirement for the written form – as well as collateral agreements of any kind also require written confirmation to become valid.

2.4 Cost estimates are binding and free of charge unless otherwise expressly agreed.

2.5 If the supplier does not accept the order within two weeks of receipt we are entitled to cancel the order. Delivery schedules are binding if the supplier does not disagree within five working days of receipt.

2.6 Quantities ordered must be adhered to; short deliveries or deliveries exceeding the quantity ordered are permitted only with our agreement.

2.7 If parts provided are damaged or become defective through processing /surface treatment the contractor must pay for the resulting losses.

2.8 Variations in quality which do not influence the functionality need a special release by us. The application for such release has to be made in written form.

3. Delivery

3.1 Deviations from our contracts and orders are only permitted following our prior written approval.

3.2 Agreed deadlines and time limits are binding. Receipt of the goods by us shall be the deciding factor in determining adherence to the delivery date. If delivery is not agreed ex works (DDU or DDP according to Incoterms 2000), the supplier must ensure that goods are provided in a timely manner taking into consideration the time for loading and shipping as agreed with the respective carrier.

3.3 If agreed deadlines are not adhered to, the law shall apply. If the supplier anticipates delays in regard to production, the supply of materials needed for production, adhering to delivery dates or similar circumstances, which may prevent them from delivering on time or to the agreed quality standards, the supplier must inform our purchasing department immediately.

3.4 The unconditional acceptance of a delayed delivery or service does not constitute a waiver of claims for compensation to which we are entitled due to the delay in providing the delivery or service; this applies until full payment of the delivery or service in question has been made by us.

3.5 Partial deliveries are not permitted unless we have expressly agreed to it or find it acceptable. In case we agreed to a partial delivery we ask that the packing slip is noted upon delivery, e.g.: As discussed with Mr./Mrs.

3.6 In regard to units received, weights and dimensions of items, the values determined by us when inspecting the incoming goods shall be binding.

3.7 The ordered merchandise is to be delivered in appropriate packing material, protecting the goods against damage or corrosion.

4. Force majeure

Force majeure, strike, operational disruptions without fault, disturbances, measures taken by the authorities and other unavoidable events entitle us – without prejudice to other rights – to withdraw from the contract in whole or in part, providing these events are not of an insignificant duration and do not result in a considerable reduction in our requirements.

5. Delivery note and invoice

5.1 The information named in our orders and delivery schedules are valid. The invoice has to be sent to the printed address shown, stating the order number and possible added identifying marks; the invoice must not be included with the delivery.

5.2 Collective invoices are not accepted, we need a separate invoice for each order.

6. Pricing and passage of risk

If no special agreement is made, prices are delivered duty paid (DDP in line with Incoterms 2000), including packaging. Sales tax is not included. The supplier bears the material risk until the goods are accepted by us or our representative at the location to which the goods are to be delivered as stated on the order.

7. Payment terms

Provided that no special arrangement has been made, the invoice shall be settled either within 14 days less a 3% discount or with no deduction within 30 days from the invoice date and receipt of both, the invoice and the goods or service. If the preceding named due date of payment falls on a Saturday, Sunday or public holiday, the day of payment will be rescheduled to the next working day without the supplier executing his right of discount return remittance as per law. Payment is subject to invoice verification.

8. Claims for defective goods and recourse

8.1 Acceptance is subject to examination of freedom from defects, in particular also for correctness, completion and suitability. We are entitled to inspect the subject of the contract insofar as and as soon as this is feasible in the normal course of business; we will submit a complaint regarding any defects discovered as soon as noted, obvious defects immediately. In this respect the supplier waives objections of late complaints regarding defects.

8.2 The provisions of the statute on material defects and defects of title are applicable unless subsequently other arrangements have been made.

8.3 The right to select the method of supplementary performance shall always lie with us. The supplier has the right to refuse the chosen type of supplementary performance as per Section 439 [3] of the German Civil Code.

8.4 In the event that after our request the supplier does not immediately commence rectifying the defect, in urgent cases, especially to prevent acute danger or greater damage, we are entitled to undertake such remedies ourselves or to have it undertaken by a third party at the expense of the supplier.

8.5 In the case of defects of title, the supplier also indemnifies us from any claims which may exist from third parties.

8.6 The right to compensate prescribes in 3 years, unless the goods were used for structures according to common use and have caused its deficiency. The limitation period for warranty claims starts with the passing of the object of agreement (passing of risk).

8.7 For parts of the delivery which could not stay at factory during examination of defects or remedial action the prescription is inhibited within this period. The same holds true for any running guarantee in the time of the interruption. With that time, the period of limitation rather than the guarantee starts anew for corrected or newly delivered products - beyond estoppel.

8.8 If any costs arise due to the faulty delivery of the subject of contract, particularly delivery-, personnel costs, cost of materials or costs for exceeding the normal scope of delivery acceptance control, the supplier has to bear the expenses arising.

8.9 If we take goods back which were produced or sold by us due to the defectiveness of the object of agreement delivered by the supplier, or the purchase price has been reduced or we have experienced similar monetary damages, we reserve the right of recourse to the supplier.

8.10 We are entitled to require a replacement for charges, which we had to bear in doing business with our customer, because this customer is entitled to demand replacement for supplementary performance; particularly charges, for delivery, ways, personnel costs and cost of materials.

9. Product liability and recalls

9.1 In case we are sued for product liability, the supplier is obligated to release us from liability of such damages, if the supplier has caused the damage of the object of agreement. This will only hold true in case of the supplier's fault if we are sued for damages. If the supplier is responsible for the cause of damage, he bears the onus. The supplier bears in this case all costs and risks, including litigation or recall costs. We will inform the supplier about the content and the amplitude of the required recall actions – as far as possible and reasonable – and we will give him the opportunity to give a statement.

9.2 For the remainder the law applies.

10. Performance of operations

Persons required to perform work on the premises to fulfil the contract must observe the relevant site rules. We cannot be held liable for accidents happening to these persons on the business premises, providing the accident is not caused by wilful or grossly negligent breaches of duty on the part of our legal representatives or agents.

11. Provision of material

We retain ownership of materials, parts, containers and special packaging provided by us. These may only be used for the purpose intended. Materials are processed and parts are assembled on our behalf. There is an agreement that in relation to the value of the materials provided against the value of the final product we are co-owners of the products manufactured using our materials and parts insofar as they are being kept safe for us by the supplier.

12. Documents and non-disclosure

12.1 All commercial or technical information made accessible by us (including features which can be taken from objects, documents or software provided, and other knowledge or experience) shall be kept confidential from third parties, as long as and insofar it can be demonstrated that it is not public knowledge, and may only be provided to such persons within the supplier's own operations who need to use them for the purposes of fulfilling the delivery and who are likewise bound to confidentiality; we retain exclusive ownership thereof.

Such information must not be duplicated or used for commercial purposes without our prior written agreement – except for deliveries to us. At our request, all information originating from us (including any copies or recordings made if applicable) and loaned objects shall be returned to us immediately in full or destroyed. We retain all rights to such information (including trademark rights such as patents, registered designs, semiconductor protection, etc.). Insofar as these are made accessible to us by third parties, this legal reservation also applies in favour of these third parties.

12.2 Drawings drafted by us will be recalled after order completion.

12.3 Products which are designed after our designs, models, drawings and the like or which are manufactured according to our confidential information or with our tools or copied tools, can be used neither by the supplier themselves nor any third person. This also applies for drawings.

13. Place of fulfilment

The place of fulfilment is the location to which the goods are to be delivered as ordered.

14. General provisions

14.1 Should any term of these conditions and the other agreements reached be or become ineffective, this shall not affect the validity of the conditions in other respects. The contracting parties are obligated to replace the ineffective term by one which comes closest to attaining its originally intended economic success.

14.2 The place of jurisdiction for all legal disputes which result directly or indirectly from contractual relationships based on these purchasing terms is the domicile of the purchasing company. However we are entitled to take the supplier to court as we see fit at the court of the supplier's domicile or the supplier's branch or at the court of the place of fulfilment.

14.3 German law applies exclusively to the legal relationships arising from contracts. Conflict of laws and the terms of the UN Convention on Contracts for the International Sale of Goods (CISG) are ruled out.

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