

# Purchase conditions of ING. SUMETZBERGER GMBH. (Valid as of the 1<sup>st</sup> January 2020)

## 1. Requests

are non-binding for us and do not oblige us to provide any compensation or reimbursement of expenses. The offers are binding and must correspond to the wording of the request text. Any alternative propositions must be submitted separately and contain express notes concerning the normative and linguistic deviations. Offers remain binding for 12 months.

## 2. Ordering

Only written and official orders of purchase, designated as such, with an order number, are considered legally valid (also applies to management and maintenance contracts). Additional performances exceeding 10% require a separate order. Signed management notes of our technicians do not have any legal force.

## 3. Order confirmation

We require the order confirmation to be sent without delay, with indication of the order number, to [einkauf@sumetzberger.at](mailto:einkauf@sumetzberger.at). If it is not sent within two days as of the reception of our order, we shall interpret your silence as full agreement with the contents of our order. Only written orders are binding for us. Deviating prices, deadlines or other conditions are only binding for us if we have expressly accepted them in writing. We recognise conditions of the supplier that deviate from our provisions only if we have confirmed them in writing. Even in case of deviating order confirmations, a delivery always signifies recognition without reserve of our conditions of purchase.

## 4. Delivery deadlines

All orders confirmed by us are considered as fixed date business transactions in the sense of the § 376 of the Austrian Commercial Code (UGB). Only cases of force majeure can release from the observance of the delivery deadline, to the extent that such cases have caused the delay to be answered for and we were informed immediately in writing of the occurrence of such an event. The delivery deadline is extended in such a case by the delay caused by the event. If the agreed delivery deadline is not observed (except for force majeure), we shall bill a 1% penalty for each working day by which the delivery is delayed, up to a maximum amount of 10% of the order value, without proof of the damage incurred and regardless of culpability. If outturn samples or deliveries are not received by the agreed deadline for reasons that the supplier is to answer for, we reserve the right to withdraw either from the full or from the as yet unfulfilled part of the contract without compensation for the supplier. Without prejudice to any penalties due, we are entitled to assert our damage compensation claims due to non-fulfilment and any additional costs that are incurred due to the delivery not being made on time. In cases of force majeure or official measures, we can fully or partially revoke the order or request execution at a later date, without this resulting in any claims for the supplier against us. In case of delivery of non-normalised parts, outturn samples must be presented to us before the first delivery in good time, so that the delivery deadline wished by us can be observed.

## 5. Delivery

is performed at the expense and risk of the supplier, DDP Leberstraße 108-110, 1110 Vienna (unloading) (INCOTERMS 2010). Excess deliveries may not exceed 2%. For large items and devices, the exact number is always to be delivered. The deliveries are to be made from Monday to Thursday between 7:30 a.m. and 11:00 a.m. with a delivery note, on which the order number and the article number are visible. Furthermore, it is to be noted that the delivery must be made according to the prescribed shipping type and at the construction site or building specified in our order note. Non-observance of the shipping or shipping address entitles us to assert damage compensation claims. Our confirmation on the delivery note always applies only under the condition that the goods are first considered accepted when no lacking quantities or defects are noted in the subsequent assessment. When we fully or partially cancel a placed order, the supplier is not entitled to assert damage compensation claims.

## 6. Return shipments

Undamaged goods that have not been subject to adaptation or processing are to be accepted as returns upon request and to be reimbursed by the amount that was originally billed.

## 7. Packaging

is included in the price. All damage caused by improper packaging is to be borne by the supplier. The supplier makes the binding declaration that the packaging material used can be disposed of as harmless household waste. Furthermore, the supplier commits to collecting and taking back the packaging material upon our request, at the own expense.

## 8. Invoices

are to be sent separately, immediately upon delivery, in a single copy, or for deliveries from abroad in a double copy, with the attached and signed transfer notes and delivery notes, with the exact indication of the order number and our type and goods designations, to [invoice@sumetzberger.at](mailto:invoice@sumetzberger.at). In case of purchase of services from the area of the European Union (ig.E), we shall only accept value added tax-free invoices, as every purchase is made with the indication of our UID (ATU 37204100). Furthermore, any shipment from abroad is to include a copy of the invoice. Penalties due to late invoicing or invoicing that does not correspond to our conditions are to be borne by the supplier. We reserve the right to return invoices that do not fully correspond to our specifications (including with regard to the number of copies) without editing. In this case, the invoices count as non-submitted until they are sent anew.

## 9. Payments

(i.e. issuance of the payment orders to our bank) are made in accordance with the payment conditions mentioned after verification of the goods, at our discretion either cash less discount or without deduction. The payment period begins with the transfer of the goods and presentation of the invoices. In case of early delivery and invoicing, the payment periods begin at the agreed delivery date, in case of reclamations once the reclamations are fully remedied. We pay within 30 days with 3% discount or 90 days in full. If we do not observe the payment deadlines, the supplier can bill a default interest/late payment fine for the delay period. The basic interest rate applied may only exceed the current rate of the European Central Bank at the time of the reception of the invoice by 3%.

## 10. Aids

Drawings, norm sheets, templates, instructions, tools, press moulds, models and other similar things (hereinafter also referred to as "aids") are our property and must be sent back in an impeccable state, at the latest by the time of delivery. These aids and the goods made accordingly may neither be transmitted to third parties without our permission nor used for these third parties or for reclamation purposes. Offenses will give rise to damage compensation and entitle us to withdrawal from all concluded delivery contracts. Tools, moulding devices, casting patterns etc. remain our property or become our property if their production costs are fully or partially included in the price.

They are to be kept ready for use at all times and must always be usable for another impeccable production. The depositor bears the full liability for disposals, damage and other similar cases, they are therefore to ensure the insurance of the aids. Instructions and calibres provided by us may only be used for control purposes during the production. Work instructions are to be produced by the supplier themselves. In case the supplier encounters production difficulties, significant delivery delays or similar cases, we are entitled to request the free transfer of the forms etc. that we have paid in full or in part. Forms etc. that are the property of the supplier are to be offered to us to purchase in this case.

## 11. Confidentiality

The supplier is obliged to keep secret any information (data, figures, addresses etc.) that they receive through negotiations or established business relationships. In case of non-observance of this obligation, we are entitled to assert a penalty regardless of culpability amounting to 50 000.00 EUR. Furthermore, the supplier commits to imposing this confidentiality obligation on all persons in the supply chain who have access to the information in question.

## 12. Contributions of materials

remain – even when they are billed – our property and are to be stored separately, managed and insured as such. Their use is only permitted for our orders. In case of loss of value or loss, replacement is to be ensured by the supplier. Processing or restructuring the materials is performed for us and we become the direct owner of the new or restructured items. The supplier is to keep the new items for us with proper commercial care.

## 13. Prices

are DDP for Vienna (discharged) (INCOTERMS 2010) including taxes, fees and duties and are fixed prices. If the price agreement could not be established, the prices stipulated in the order confirmation of the supplier require our subsequent written acceptance. No higher liabilities can be imposed upon us due to currency exchanges than those arising from the original agreement. If the supplier grants a third party better conditions for similar orders, the contractual conditions must subsequently be adjusted accordingly (through price reductions or credit).

## 14. Guarantees and defect notices

For the execution of our order, the supplier commits to observing our indications concerning dimensions, quality and design, as well as all electrotechnical safety provisions, particularly the Austrian Electrical Engineering Law of 1992 in its up-to-date version and all provisions based on this, as well as the applicable ÖVE provisions, or VDE provisions if they have not been replaced by ÖVE provisions, Austrian standards (ÖNORM), DIN norms or European norms (EN) and generally accepted technical rules.

All parts that become defective within five years are to be replaced free of charge or, if such is our choice, to be taken back at their original invoiced value. In case of deliveries that are not made on time or that are not of impeccable quality, we are entitled to procure replacements of equal value at the expense of the supplier.

For the establishing of defect notices, we are not bound to the observance of any legally determined or other prescribed deadlines regarding either evident or hidden defects. The supplier therefore waives any objection to delayed notices of defects. Hidden defects entitle us to establish defect notices at any time, and to request the replacement of the fees paid in vain. If the sample-based investigation of a delivery shows that it does not meet our specifications, the entire delivery can be provided. We are entitled to return the goods to the address of the supplier 10 days after sending the defect notice if we have received no other shipping instructions by then. Moreover, in case of agreed partial deliveries, we reserve the right to cancel the deliveries that have not yet been made if a non-conform delivery is made. Transport costs are to be borne by the supplier. In case of particular urgency, we reserve the right to subsequently process defective goods at the expense of the supplier, without prior notice. The cost of such subsequent work is to be compensated in full, even if this cost is higher than if the subsequent work had been performed by the supplier.

## 15. Availability of spare parts

The supplier guarantees that replacement parts for devices will be available for at least 10 years after discontinuation of production. If the supplier is not able to keep this promise in a particular case, we are to receive a comparable new device from the current catalogue as compensation, free of charge. The previous device becomes our property.

## 16. Securities

Cover and security retentions are ensured for projects as of a project sum exceeding 20 000.00 EUR (net). The cover retention amounts to 10% and the security retention to 5%. The latter can also be replaced by a bank guarantee until the end of a guarantee period. A deposit or performance guarantee is reserved as of a project sum exceeding 100 000.00 EUR (net). This amounts to 20% and can also be replaced by a bank guarantee. The liability insurance policy is to be presented to us within a week, otherwise we reserve the deposit as security.

## 17. Transfer of risk

Deliveries and shipments are made in principle at the expense and risk of the supplier, who therefore bears the full transport risk. However, if an agreement is made deviating from this, stipulating that we accept the transport risk, for example in case of delivery ex-works, the supplier is obliged to safeguard our interests with proper commercial care and to immediately assert any compensation claims against the carrier for loss, loss of value or damage of the goods or similar cases, and to immediately cede these claims to us – without prejudice to the liability of the supplier – upon our request.

## 18. Complement in the sense of the Austrian Product Liability Law

- In product liability cases, regarding all products delivered by them, the supplier commits to:
  - satisfying all of our compensation claims and costs and expenses incurred, as well as keeping us free from any product liability claims of third parties,
  - immediately informing us of the respective manufacturers, importers, sub-contractors and sub-suppliers upon our first request,
  - granting us aid in all legal disputes and providing us with all useful evidence in good time.
  - providing all documents from which production and delivery batches as well as production and delivery times arise.
- The supplier commits to immediately providing us with all information about possible or newly discovered defects of the contractual product. If the product should turn out to be no longer usable at all or at least no longer usable in Austria on the basis of new findings, the supplier commits to taking back all stored amounts still present at their invoice value.
- The contractual parties assume that the contractual product is the own product of the supplier, for which the supplier bears liability as manufacturer. If it should later turn out that the supplier has delivered full or partially third-party products, the supplier commits to bearing the liability as a manufacturer.
- The contractual parties expressly agree that the supplier shall also be liable for any material damage that we suffer as a company. Deviating provisions or announcements are groundless.
- The supplier commits to numbering all products sequentially, using technical means. The numbering is to be in durable form and not on the cover but on the product itself; if this is not possible, on the container that will remain with the product for the longest. The numbering by the supplier shall be performed in the context of their quality assurance system. The individual item-specific data is to be made available for us at all times. The serial numbers added onto the products are to be indicated on the delivery notes and on the invoices.
- The engineers, planners, statisticians, designers etc. commit to compensating for all product liability damage that occur for us or for third parties if this product liability damage arises from a fault that lies with them.

## 19. Transmission

of our orders to third parties for manufacturing or processing is only permitted with our express approval. The transmission of drawings, templates or other work aids is forbidden. Offenses entitle us to immediate withdrawal from the contract and to damage compensation claims.

The cession of claims by the supplier is only permitted with our prior written agreement.

## 20. Property rights

The supplier is to keep us free from actually existing or presumed property rights claims of third parties concerning the delivery or service performed.

## 21. Code of Conduct

The supplier hereby commits to fully observing our principles and requirements. (Code of Conduct/Sumetzberger/pdf is to be consulted separately)

## 22. Place of fulfilment, jurisdiction and applicable law

The place of fulfilment for payments is Vienna. The competent court in Vienna is agreed to be the sole place of jurisdiction. The legal relationship is subject to Austrian law.

Ing. Sumetzberger GMBH.