

# Terms and Conditions of Purchase 04/2021

## FUCHS Enprotec GmbH • Stocktal 2 • 56727 MAYEN • GERMANY

### 1. General information

- Our orders shall solely be placed in accordance with the General Terms of Conditions for Purchase as detailed below in the version in effect at the time the order was placed. They also apply to all future business transactions, even if they are not referenced by us in all individual cases.
- Deviating, conflicting, or supplementary General Terms and Conditions by the contractor or third parties, even if they are known, shall not form part of the contract unless we have expressly agreed to recognize their validity. Even if we reference a letter that contains or refers to the Terms and Conditions of a contractor or third party, this shall not constitute any agreement with the validity of these Terms and Conditions. This shall also apply even if we accept the delivery/performance of the contractor or third party without reservations with knowledge of contradictory or deviating Terms and Conditions. If the contractor does not agree with the procedure above, it shall immediately express its disapproval in a separate letter. In this case, we reserve the right to withdraw from the contract.
- The Terms and Conditions shall only apply to relations with companies, legal entities under public law, or special funds under public law.

### 2. Quotation

- Quotations shall correspond to our request for quotation. Deviations that cannot be avoided shall be expressly and clearly indicated in the quotation. We welcome quotations of alternatives. However, they shall be expressly marked as such. All quotations shall be free of charge.
- The contractor shall notify us of obvious errors (e.g., spelling and calculation errors) and incomplete areas of the quotation including any accompanying documents for the purpose of correction and completion before the quotation is submitted.

### 3. Scope of delivery and performance

- The scope of delivery and performance shall be determined based on the content, type, and scope of the technical specifications as well as their attachments defined in the request for quotation or order.
- The agreed-upon scope of delivery shall also include parts required for the use or for the functions of the delivery item or the system (for complete deliveries), even if they have not been expressly listed in the technical specification. The scope of delivery shall include assembly incidentals such as screws, nuts, rivets, welding electrodes, etc., that are required for the assembly of the delivery item at the construction site. Depending on the size, at least 110% of the quantity adequate for the construction shall be provided.
- The agreed-upon scope of delivery shall also include the technical documentation to be provided by the contractor, which is listed in the relevant order and their attachments. These documents shall become our property. We can make them available to our customers.
- Upon request, the contractor shall attach our company sign in a clearly visible place on the delivery items free of charge.

### 4. Delivery deadlines

- The contractor shall provide the deliveries and performances in accordance with the deadlines specified in the order, including their attachments. Early deliveries are not permissible.
- The contractor shall undertake to immediately notify us in writing if circumstances arise or can be foreseen where the delivery deadline cannot be met.
- If the day on which the delivery is due at the latest can be determined based on the contract, then the contractor is in delivery default at the end of that day without the necessity for us to provide a reminder. In case of a delay in delivery, we shall be entitled to unrestricted legal claims. However, we will only be able to exercise our right to withdraw or claim damages instead of performances after the unsuccessful expiration of an appropriate grace period.
- We shall be entitled to postpone the start of construction or assembly of the delivery item at our customer to a later time if, for reasons beyond our control, we cannot start with the construction or assembly on the agreed-upon date. In this case, all deadlines agreed upon with the contractor will be postponed correspondingly. In this case, the contractor undertakes to store delivery items and equipment completed based on the assembly dates for up to 3 months at no additional cost.

### 5. Delay in delivery

- If the contractor exceeds the agreed-upon deadlines, it shall be obligated to pay a lump sum compensation for our damages caused by the delay for each full week of delay in the amount of 1% of the net order value, or a maximum 5% of the goods delivered behind schedule. We reserve the right to prove that we have incurred greater damages. The contractor reserves the right to prove that no damages or only substantially lower damages have been incurred.
- If the contractor fails to provide its performance at all or not within the agreed-upon delivery deadline or is in delivery default, then our rights – especially the rights to withdraw and claim damages – shall be determined by the provisions of the law. The provisions in Section 1 remain unaffected.

### 6. Place of performance, transfer of risk

- The place of performance for all deliveries and performance is Mayen. However, if a user or a construction site is specified in the order, then this is the place of performance for all deliveries and services, unless specified otherwise in the order.
- With regard to the delivery of the technical documentation and other documents, the following applies in deviation from sentence 1: All documents must be sent to us in digital form to the e-mail address provided by us. Furthermore, all documents required for the installation and operation must be delivered along with the delivery item.
- The risk of the accidental loss or accidental deterioration of the deliveries or performances of the contractor passes to us upon delivery at the place of performance. If an acceptance has been agreed upon, this shall be authoritative for the transfer of risk.

### 7. Prices

- The prices specified in the order shall apply unless they are obviously based on an error. Price changes shall only be valid if they have been accepted by us in writing.
- When delivering machinery, all auxiliary means required for the completion of the system, the startup, and the test run, as well as all assembly incidentals as per Section 3.2 shall be included in the price.

### 8. Terms of payment, bank guarantee

- We shall be entitled at all times to demand a warranty bond for the warranty period in the amount of 5% of the gross (final) invoice amount from the contractor, if the gross (final) invoice amount exceeds € 10,000.00. If the gross (final) invoice amount is below € 10,000.00, we shall be entitled at all times to demand a warranty bond for the warranty period in the amount of 10% of the gross (final) invoice amount.
- We shall be legally entitled to the right of setoff and retention as well as the right to plead the defense of nonperformance of contract. In addition, we shall be entitled to withhold payments that are due as long as we are entitled to claims from incomplete or poor performance against the purchaser.
- The bank guarantees must come from the main address of German banks and correspond to the European Investment Bank (EFB-Sich) forms. They must be for an indefinite period of time and contain a waiver of the defense of an appeal, setoff, and advance claim (paragraphs 770 and 771 of the German Civil Code [BGB]) as well as defense under Paragraph 776 BGB.

### 9. Warranty claims

- The contractor shall assume warranty in accordance with the statutory provisions as well as the terms below.
  - The contractor shall assume warranty that its delivery items and/or performances lead to the required economic and technical results; meet the modern and technologically advanced state of the art at the time the contract is concluded; if applicable, comply with DIN, VDE, VDI, DGUV, ATV or equivalent standards; have proven design and technology; have been proved in practice; and are free from any defects and flaws that negate or reduce the value for the intended use. On the day of delivery, the delivery items shall comply with the statutory provisions applicable at the place of performance as per Section 6.1, especially those involving technical equipment, hazardous materials, accident prevention, emission protection, and workplace protection, as well as the verified findings regarding ergonomics. Specifically, the contractor shall be liable for the following:
    - That the delivery items meet the requirements specified in the order letter and its supplements or attachments and that the applicable directives and standards have been complied with;
    - That all technical data, especially the performance data specified in the order letter, have been observed;
    - That the design and the workshop work is of top quality and meets the current state of the art and that only new material has been used that is best suited for the intended purpose;
    - That the delivery and performance items meet the legal provisions with regard to occupational safety in effect at the time of delivery (Machine Safety Act, etc.) as well as the relevant accident prevention regulations, and that the delivery and performance items are fitted with the required protective equipment;
    - That the system complies with the environmental protection regulations.
  - The contractor shall ensure that it has the required expertise and is familiar with the technology to be applied. Should it not be possible to use the material/system we requested/ordered due to the local conditions, which can influence the material conditions and the conditions for use, the contractor shall notify us when the contractor is notified of the point of use at the time the order is placed at the latest.
  - The confirmation of receipt does not constitute a confirmation that the delivery is complete and that it meets the quality requirements.
  - The commercial obligation to inspect and give notice of defects shall be governed by the statutory provisions (paragraphs 377, 381 German Commercial Code [HGB]) and shall be subject to the following conditions: Our duty for inspection shall be limited to defects that are easily noticed while visually inspecting incoming goods, including delivery documents (e.g., transport damage, incorrect delivery, shortfall in delivery) or which can be identified during our quality inspection of random samples. No inspection is required if an acceptance has been agreed upon. Moreover, whether an inspection is required depends on how feasible this is within the regular course of business operations considering the circumstances of each individual case. Our obligation to give notice of defects discovered at a later point shall remain unaffected. Regardless of our duty for inspection, our complaint (notice of defects) shall be immediate and on time if it is sent within 5 workdays from the day of discovery or, in case of obvious defects, from the day of delivery/acceptance.
- We are not obligated to inspect the goods or to make special inquiries about any defects when the contract is concluded. Therefore, we are entitled to claims for defects without any limitations even if we remained unaware of the defect at the time the contract was concluded due to gross negligence.
- Upon receipt of our written notification of defects by the contractor, the statutory limitation for warranty claims shall be suspended until the contractor rejects our claims or declares that the fault has been eliminated or refuses to continue negotiations to settle our claims. The warranty period starts anew for replaced and improved goods from any replacement deliveries and defect corrections, unless we must assume from the behavior of the contractor that it does not admit that it is obligated to these measures and is only providing the replacement delivery or defect corrections as a gesture of goodwill or for similar reasons.
  - During the warranty periods, the contractor shall replace those parts of the deliveries and/or performances that have shown to be incomplete or defective at its own expenses and in the shortest period of time possible. Furthermore, it shall do everything that is necessary to ensure that the system is in a perfect and satisfactory operating condition after the warranty period has expired.
  - Without prejudice to our legal rights, the following applies: Should the contractor fail to comply with its obligation for subsequent performance – at our choice, either by eliminating the defect (rectification) or by delivering an item that is free from defects (replacement delivery) – within an appropriate period of time set by us, we shall be able to remedy the defect ourselves and demand reimbursement of the costs required to do this or an appropriate advance payment from the contractor. If the subsequent performance by the contractor has failed or is unacceptable for us (e.g., due to special urgency, risk of operational safety, or imminent occurrence of disproportionate damages), there shall be no need to set a deadline; we will notify the contractor of these types of circumstances immediately, if possible beforehand.

#### 10. Supplier regress

1. In addition to the warranty claims, we shall have unrestricted entitlement to our legally determined rights of recourse within a supply chain (supplier regress as per paragraphs 445a, 445b, 478 BGB). In particular, we shall be entitled to demand precisely the type of subsequent performance (rectification of defects or replacement) from the contractor that we owe to our customer in each individual case. This shall not limit our statutory right to choose (Paragraph 439, Section 1 BGB).
2. Before we acknowledge or fulfill a claim for defects asserted by our customer (including reimbursement for expenses as per paragraphs 445a, Section 1, 439 Section 2, and 3 BGB), we will notify the contractor and, giving a brief account of the facts, request a written statement. If a substantiated statement is not received within an appropriate period of time and an amicable solution is not reached, the actual claim for defects provided by us shall be deemed to be owed to our customer. In this case, the contractor shall be responsible for providing proof to the contrary.
3. Our claims for supplier regress shall also apply if the defective goods were further processed by us or another business owner, e.g., through installation into another product.

#### 11. Product liability

1. If the contractor is liable for product damage, it shall hold us harmless from any claims of third parties to the extent that the cause lies within its range of command and organization and as far as it shall be held liable itself in the legal relationship with third parties.
2. Under its obligation to indemnify, the contractor shall reimburse any expenses pursuant to paragraphs 683, 670 BGB that arise out of or in connection with any recourse taken by third parties including for recall campaigns carried out by us. We will, to the extent possible and reasonable, notify the contractor of the content and extent of recall measures and give it an opportunity to comment. Additional statutory claims shall remain unaffected.
3. The contractor shall purchase and maintain a product liability insurance with adequate coverage per personal injury/material damage. Upon request, the contractor must send us a copy of the insurance policy.

#### 12. Replacement parts

1. The contractor undertakes to also deliver replacement parts necessary based on its experience for 2 years of operation (i.e., wear parts). At our request, it shall also sell us additional replacement parts at the same price as for the first delivery if the replacement parts are ordered within 12 months after the acceptance/delivery.
2. The contractor undertakes to provide replacement parts for the products delivered to us for a period of at least 10 years after the delivery/acceptance.
3. If the contractor intends to stop the production of replacement parts for products delivered to us, it will notify us immediately after the decision has been made to stop production. The decision shall be made at least 6 months before the stop of production.

#### 13. Infringements on protective rights

1. The contractor shall be liable for ensuring that, by delivering and using the deliveries/performances offered, patents, utility models, trademarks, or other protective rights of third parties are not violated.
2. The contractor undertakes to indemnify us and our customers of any claims asserted due to these types of infringements by third parties against us or our customers.
3. Our further statutory claims due to defect in title of the goods delivered to us remain unaffected.

#### 14. Drawings/documents, confidentiality

1. All specifications, information, drawings, and other documentation (with the exception of information accessible to the public), which are provided to the contractor to produce the delivery item, as well as the drawings and documents created based on our specifications shall not be used by the contractor for other purposes, copied, or made accessible to third parties. Should the delivery not take place, the contractor must return them without further request.
2. The contractor shall consider the order and the documents specified in Section 1 as trade secrets and therefore treat them as confidential. The documents must be kept confidential from third parties after the termination/completion of the contract. The confidentiality obligation shall remain in effect until and if the knowledge contained in the documents has entered the public domain. The contractor shall be liable for all damages incurred by us from the violation of any of these obligations.
3. The contractor will bind its subcontractors in accordance with this Section 15.

#### 15. Compliance with laws

1. The contractor undertakes, in connection with the contractual relationship, to comply with the legal provisions applicable to the contractor. This shall apply in particular to anti-corruption and money-laundering laws as well as antitrust, labor law, and environmental protection provisions.
2. The contractor shall ensure that the products it delivers meet all relevant requirements for introduction into the European Union and in the European Economic Area. Upon request, the contractor must provide evidence of conformity by presenting suitable documentation.
3. The contractor shall make reasonable efforts to ensure that its suppliers will comply with the obligations that apply to the contractor in this Section 15.

#### 16. Additional terms and conditions

1. If it is apparent on the order that we or our customer are a public authority contractor, then the Building Contract Terms (VOB) and/or Service Contract Terms (VOL) shall become an integral part of the contract unless they contradict our Terms and Conditions of Purchase.
2. If all or parts of the individual provisions of these Terms and Conditions of Purchase are or become invalid, the effectiveness of the remaining provisions will not be affected by this. Instead of an invalid provision, an appropriate provision shall apply that – if legally permissible – comes closest to what the parties intended or would have wanted in the sense and purpose of this provision. Even the repeated failure to apply provisions shall not stop them from being binding.

#### 17. Choice of law – Place of jurisdiction

1. Unless agreed otherwise, this contract shall be governed by the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
2. The location of our company's registered office shall be the place of jurisdiction. However, we shall also be entitled to sue the contractor at its place of jurisdiction.