

General Terms and Conditions of Purchase Polysius AG

1. Purchaser's terms and conditions of purchase shall apply exclusively. Supplier's terms and conditions which deviate from Purchaser's conditions of purchase shall not be recognized by Purchaser unless Purchaser expressly consents to their validity in writing.
2. The terms and conditions of purchase shall also apply exclusively if Purchaser accepts or pays for supplies/services in full awareness of contradictory or varying terms and conditions of Supplier.

IV. Purchase orders

1. Purchaser orders shall be binding only if they are placed by Purchaser in writing. Verbal agreements - including subsequent amendments and additions to these terms and conditions of purchase - must be confirmed in writing by Purchaser for them to become valid.
2. For the period of their validity, cost estimates shall form a binding basis for resultant orders. They shall not be remunerated unless expressly agreed otherwise.
3. Documents used by Supplier in business dealings with Purchaser shall indicate at least: purchase order number, commission order number, plant, place of receipt, full article text/item description, volumes and volume units as well as VAT ID (for imports from the EU).

II. Prices

The prices are fixed prices. They are inclusive of everything Supplier has to do to fulfill supply/service obligation.

III. Scope of supply/service

1. As part of the scope of supply/service
 - Supplier shall transfer to Purchaser ownership of all technical documents (also for subcontractors) and other documents needed for manufacture, maintenance and operation. Said technical documents shall be in German and shall be based on the international SI standard system;
 - Supplier shall transfer all rights of use needed for the use of the supplies/services by Purchaser or third parties taking into consideration any patents, supplementary protection certificates, brands, registered designs;
 - Purchaser shall have the unconditional authority to carry out or have carried out by third parties repairs and modifications to the purchased supplies/services, and also to manufacture spare parts or have them manufactured by third parties.
2. If the scope of supply/service is to differ from that agreed, Supplier shall be entitled to additional claims or schedule changes only if a corresponding supplementary agreement is concluded in writing with Purchaser prior to performance of the order.
3. The ordered volumes are binding. In the event of excess supplies/services, Purchaser shall be entitled to refuse these at the expense and cost of Supplier.

IV. Quality

Supplier shall install and maintain a state-of-the-art, documented quality system of suitable type and scope. Supplier shall prepare records, in particular of quality inspections, and make these available to Purchaser on request.

Supplier hereby agrees to quality audits being carried out by Purchaser or Purchaser's representative to assess the efficiency of said quality system.

V. Supply and service periods/deadlines

1. Agreed delivery dates are binding. In the event that agreed deadlines are not met, statutory provisions shall apply. Supplies/services provided before the agreed delivery dates shall entitle Purchaser to refuse supply/service until it is due.
2. If Supplier becomes aware that an agreed deadline cannot be met, he must inform Purchaser in writing without delay, stating the reasons and the expected duration of the delay.
3. Unreserved acceptance of the delayed supplies/services may not be construed as relinquishment of any compensation to which Purchaser is entitled; this shall apply until full payment of the fee owed by Purchaser for the supply/service concerned has been made.

VI. Delivery/performance and storage

1. Insofar as Supplier and Purchaser agree validity of one of the "Incoterms" of the International Chamber of Commerce (ICC) for the contract, the currently valid version thereof shall apply. They shall apply only insofar as they do not contradict the provisions of these general terms and conditions and other concluded agreements. Unless otherwise agreed in writing, the supply/service shall be delivered duty paid (Incoterms: DDP) to the place of delivery/performance or use indicated in the purchase order.
2. Supplies/services must be shipped to the addresses indicated. Delivery to/performance at a place of receipt other than that designated by Purchaser shall not constitute transfer of risk for Supplier even if said place of receipt accepts the delivery/service. Supplier shall bear the additional costs of Purchaser resulting from the delivery being made to/service performed at an address differing from the agreed place of receipt.
3. Part supplies/services are not permitted unless Purchaser has expressly consented thereto. Part supplies/services are to be marked as such, delivery/service notes shall be submitted.
4. If weighing is necessary, the weight determined on the calibrated scales of Purchaser shall apply.
5. Insofar as Supplier has the right to have the packaging needed for shipment/services returned, this shall be clearly marked on the delivery/service documents. In the absence of such marking, Purchaser shall dispose of the packaging at the cost of Supplier; in this case Supplier's right to have the packaging returned shall expire.
6. Items needed for the fulfillment of an order may be stored on the premises of Purchaser in allocated storage areas only. For such items Supplier shall bear the full responsibility and risk of the entire order until the transfer of risk.
7. During transportation the statutory provisions, in particular the provisions of the law on the transportation of hazardous goods and the applicable hazardous goods directives including the respective annexes and appendices must be complied with.
8. The declaration of the goods in the consignment notes for shipment by rail shall comply with the valid provisions of the railways. Costs and damages incurred due to incorrect declaration or failure to declare shall be at the expense of Supplier.
9. Supplier shall have the receipt of deliveries confirmed in writing by the indicated place of receipt.

VII. Execution, Subsuppliers, Assignment

1. Supplier shall not be entitled to transfer the execution of the contract in whole or in part to third parties.
2. Supplier is obligated to name his subcontractors to Purchaser on request.

3. Supplier shall not be entitled to assign his contractual claims vis-à-vis Purchaser to third parties or permit third parties to collect same. This shall not apply for legally established or uncontested claims.

VIII. Termination

1. Even in the event that the contract is not a work and services contract, Purchaser is entitled to terminate same in full or in part. In such an event, Purchaser is obligated to pay for all supplies/services completed up to then and make appropriate payment for material procured and work/services performed; in this case Art. 649, 2nd half of sentence 2 of the German Civil Code (BGB) shall additionally apply. Further claims of Supplier are excluded.
2. Purchaser is also entitled to terminate the contract if court insolvency proceedings are instigated in respect of the assets of Supplier or Supplier ceases payment. The same shall apply if Supplier does not meet the claims of his suppliers. Purchaser has the right to acquire material and/or semi-finished products including any special equipment on reasonable terms and conditions.

IX. Invoicing, payment, setting-off

1. Payment shall be made as agreed. Any delivery/service effected before the agreed date shall not affect the payment period tied to this delivery date.
2. Supplier may only offset against uncontested or legally established claims.
3. Purchaser is entitled to offset receivables due to Supplier from Purchaser against all receivables due to ThyssenKrupp AG or companies in which ThyssenKrupp AG holds a direct or indirect controlling interest at the time of offsetting (Group subsidiaries Art. 18 Stock Corporation Act (AktG)) from Supplier.
4. The invoice shall be settled at the end of the month following the supply/service and receipt of the invoice.
5. An invoice issued in accordance with Art. 14 German VAT Act (UStG) is a prerequisite for payment.

X. Claims under liability for defects

1. Supplier guarantees that his supplies/services exhibit the agreed properties and fulfill the intended purpose. In the event that Purchaser incurs costs such as transport/travel, working and material costs or contractual penalties as a consequence of defective supplies/services, Supplier shall bear said costs.
2. The limitation period for defect liability claims shall begin with the full supply/performance of the scope of supply/service or, if acceptance testing is agreed, on acceptance.
3. The limitation period for defect claims is 36 months; longer statutory limitation periods shall remain unaffected by this. For newly supplied/performed or repaired parts, the period of limitation starts anew, insofar as the responsible party has not eliminated the defect expressly out of goodwill. Purchaser shall provide prompt notification of defects. The notification is deemed to be in good time insofar as it arrives at Supplier within a period of seven working days of receipt of goods, or - for hidden defects - from the time of discovery. For defects notified within the limitation period, the period shall end no earlier than six months after assertion of the notice of defects. Supplier shall not object on the grounds of delayed notification (Arts. 377, 381, par. 2 Commercial Code (HGB)) for all other than obvious defects.
4. All defects which are notified within the period of limitation shall be remedied by the Supplier without delay and at no costs for Purchaser. The costs of remedying goods or supplying/performing replacements, including all incidental costs (e.g. freight) shall be borne by Supplier. If Supplier culpably fails to begin remedying the defect immediately or realize the supply/service as contractually agreed, Purchaser is entitled to carry out the necessary measures himself or have same carried out by third parties at the expense and risk of Supplier. In the event of an emergency where, due to particular urgency, it is no longer possible to inform Supplier of the defect and impending claim and set Supplier a deadline for redress, Purchaser shall be entitled to eliminate the defects himself/have them eliminated or procure replacements at Supplier's expense. This shall not affect statutory rights of withdrawal, purchase price reduction or compensation for damages.
5. In the event of defects of title, Supplier shall hold Purchaser harmless from any claims arising from third parties.

XI. Place of fulfillment, legal venue

1. Place of fulfillment for all supplies/services shall be the place of receipt indicated by Purchaser.
2. Place of jurisdiction shall be the domicile of Purchaser, or at Purchaser's choice, Supplier's general place of jurisdiction.

XII. Applicable law

All legal relations between Purchaser and Supplier shall be governed by the prevailing substantive law of the Federal Republic of Germany to the exclusion of the United Nations' Convention of April 11, 1980 on the Contracts for International Sale of Goods (CISG) in the currently valid version.

XIII. Prohibition of advertising/secretcy

1. The use of Purchaser's inquiries, purchase orders and related correspondence for advertising purposes requires Purchaser's express prior consent in writing.
2. Supplier shall maintain secrecy vis-à-vis third parties in respect of all operational events, facilities, plants, documents etc. used at Purchaser's premises or those of his customers which become known to Supplier in connection with his activities for Purchaser, also after submission of the corresponding offers and after completion of the contract. Supplier shall impose corresponding obligations, on his agents.

XIV. Severability

Should individual provisions of the conditions become entirely or partly invalid, the remaining provisions shall remain valid. The same shall apply for the corresponding contract.

XV. Data protection

Purchaser points out in accordance with Art. 33 of the Federal Data Protection Act (BDSG) that he will store data relating to Supplier on the basis of the Federal Data Protection Act.

XVI. REACH clause

Supplier must fulfill all specifications and measures resulting from the REACH directive for all materials, prepared materials and products supplied/provided to Purchaser.

XVII. Applicable version

The German version of these General Terms and Conditions of Purchase shall take precedence.

As of: July 2008