



FLABEG

**General Conditions of Purchase
of
FLABEG Deutschland GmbH
Nürnberg**

Version: March 2010

I. General, Scope

1. Our General Conditions of Purchase below shall apply exclusively for all deliveries and services to us. Other provisions, in particular the supplier's general terms and conditions, shall not apply, irrespective of whether or not such general terms and conditions have been expressly rejected by us. These General Conditions of Purchase shall also apply exclusively if we, having knowledge of other general terms and conditions, accept or effect a delivery or service without reservation.
2. Our General Conditions of Purchase shall apply only to contracts with an entrepreneur, a legal person under public law or a special fund under public law as set out in Section 310 (1) German Civil Code (*Bürgerliches Gesetzbuch* - "BGB").

II. Order and Conclusion of Contract

1. Unless our order contains an express commitment period, we shall be bound by our order for the period of one week of the date of such order.
2. Changes or amendments to our order shall only be effective if confirmed in writing by us.

III. Delivery, Transfer of Risk

1. Unless expressly agreed otherwise between us and the supplier, deliveries and services shall be made DDP (Incoterms 2000) to our works or to another place of delivery specified by us. The risk shall pass upon delivery of the goods at the place of delivery. Partial deliveries require our prior express consent. Each delivery shall be accompanied by the delivery notes (in duplicate), indicating the order data, the precise description of the item and our item number. Delivery notes may not contain prices and statements concerning terms.
2. We may request changes to the goods ordered regarding design, quality and quantity to the extent reasonable for the supplier. The impacts of such changes, in particular regarding higher or lower costs and the delivery date, will reasonably and amicably be regulated.

IV. Delivery Dates, Delivery Default

1. Agreed delivery dates shall be binding and shall be exactly observed. The date of delivery of the goods at our works or the place of delivery specified by us shall be controlling.
2. Prior written consent is required for any deliveries made outside the normal business hours (working days 7.00 am - 2.30 pm). We shall be informed in writing when outgoing goods leave the supplier's premises or the point of dispatch.
3. We will not accept deliveries prior to the agreed delivery date. We reserve the right to return goods at the supplier's expense and risk. If goods are not returned, we will store them up to the agreed delivery date at the supplier's expense and risk.
4. If, irrespective of the reason therefore, the supplier is unable to meet a deadline or a date, it shall promptly inform us of this inability stating the probable duration of the delay. In this case we may set the supplier a reasonable grace period for delivery.
5. In case of delivery default we are entitled to our statutory claims. We are in particular entitled, after fruitless expiry of a reasonable grace period, to claim damages in lieu of performance and to rescind the contract. If we choose to claim damages, the supplier shall be entitled to prove that it is not responsible for the failure to comply with its duties.
6. In case of delivery default, we are entitled to demand from the supplier a contractual penalty (*Vertragsstrafe*) equal to 0.2% of the delivery value of the delayed delivery for each working day, but not exceeding a total of 5% of the delivery value. Further-reaching claims remain unaffected. In case of amicable changes to delivery dates, the contractual penalty also applies to the newly agreed delivery dates.
7. In case of continuing delivery default, substantial deterioration of the financial situation or insolvency of the supplier or, as the case may be, if there is an insolvency filing or insolvency grounds are met, we are entitled to rescind the contract and to refuse acceptance of goods and payment.

V. Prices, Invoices, and Payments

1. The prices indicated in the supplier's offer or in our order are fixed prices for the delivery of the goods DDP (Incoterms 2000) to our works or to another place of delivery specified by us. The then current statutory value-added tax shall be included in the price.
2. Price increases, irrespective of the reason therefore, will only be acknowledged if these were previously accepted in writing.
3. Invoices shall be issued in duplicate, quoting our order data. Copies must be identified as such. Invoices may not be attached to any shipments of goods.
4. At our discretion, payments shall be made within 14 days with a 3% discount (*Skonto*) or net no later than within 60 days after delivery and receipt of the invoice.
5. In case of default for remuneration claims the interest rate shall be five percentage points above the base rate.
6. We shall have the right to set off and retain payments to the extent permitted by law. Set-off and exercise of a right of retention by the supplier due to contested counterclaims or counterclaims which are not final (*rechtskräftig*) are excluded. The exercise of any retention right by the supplier is also excluded to the extent that the counterclaims are not based on the same contractual relationship.

VI. Inspection and Claims for Defects

1. Notices of deviations in quality and quantity shall be deemed to be on time if they are received by the supplier within one week of receipt of the goods, or, in case of hidden defects, of the defects being discovered.
2. We shall be entitled to the unrestricted statutory claims for defects. In case of serial defects (defects of the same type which occur in at least 5% of the goods delivered) we shall be entitled to reject the entire delivery as defective and to assert the statutory claims for defects in respect of the entire delivery.
3. The limitation period for claims for defects shall be three years from delivery of the goods. Where the performance concerns a building or materials or parts which are customarily used in buildings, and where such materials or parts caused the defect, the limitation period shall be five years from delivery.
4. For repair or spare parts, the limitation period shall commence anew from the time of repair or replacement delivery.
5. If the supplier or a third party has given a guarantee (guarantee as to condition or durability - *Beschaffenheits- oder Haltbarkeitsgarantie*) our claims under such guarantee shall remain fully in place.
6. Any denial (*Verweigerung*) within the meaning of Section 203 sentence 1 BGB shall be made in writing.
7. Should the supplier fail to fulfil its legal obligation to make subsequent performance (*Nacherfüllung*) within a reasonable period as set by us, we shall be entitled to perform ourselves the required acts to rectify the defect at the supplier's expense, or to have such acts performed at the supplier's expense. In case of special urgency, due to which it is not possible to inform the supplier of the defect and the pending loss, and to set the supplier an, even brief, period to perform itself the acts required to rectify the defects, we shall be entitled to perform ourselves the acts required to rectify the defects at the supplier's expense, or to have the same performed at the supplier's expense; we will inform the supplier thereof.

VII. Product Liability, Indemnity, Liability Insurance Coverage

1. In the event that claims are asserted against us for infringement of product liability laws and regulations for such defects in our products that stem from the delivery of defective goods, the supplier shall hold us harmless against such claims to the extent that the damage caused originates from the sphere of responsibility or the organisation of the supplier, and the supplier itself is liable in the external relationship.
2. Within the scope of the supplier's liability as set out in Clause VII.1, the supplier shall likewise be obliged to reimburse us for any expenses as defined in Sections 683, 670 BGB as well as in Sections 830, 840, 426 BGB which we incur in connection with any recall activities conducted by us. The same shall apply if one of our customers is conducting a recall. We will inform the supplier - to the extent possible and reasonable - about the nature and scope of the re-

call activities to be conducted and give the supplier an opportunity to comment. Any other statutory claims shall remain unaffected.

3. The supplier shall maintain product liability insurance coverage of Euro 2.5 million per incidence of personal injury or damage to property - blanket coverage - and present proof thereof; further-reaching claims by us shall remain unaffected.

VIII. Industrial Property Rights, Licences

1. The supplier is responsible that in connection with its deliveries no third parties' rights be infringed, and shall hold us harmless against any claims by third parties. The supplier's indemnity includes any expenses we incur and any damages we suffer due to or in connection with any claims by third parties.
2. The exclusive rights of exploitation and the industrial property rights for any illustrations, drawings, product descriptions and data sheets are hereby transferred to us to the extent they have been generated or made on our behalf. We shall have the exclusive right to the exploitation and use of such results. The supplier shall not be entitled to use such objects outside the scope of the order without our written consent. The supplier shall be entitled to keep them in custody until recalled. The supplier shall mark such objects in a way that our right of ownership is indicated also to third parties.

IX. Reservation of Title, Provision, Tools

1. Reservation of title by the supplier shall only become part of the contract if it ceases at the time the price agreed for the goods subject to reservation of title is paid and if we are authorised to resell and re-process the goods in the ordinary course of business. We will not accept any reservation of title by the supplier that goes beyond such scope.
2. We reserve title in all items we provide the supplier with. Any processing (*Verarbeitung*) or reworking (*Umbildung*) by the supplier shall be performed for us. If the items to which we reserved title are processed together with other items which are not our property, we shall acquire co-title in the new thing in the proportion of the value of our items to the other items processed at the time of such processing.
3. If the items we provided are inseparably commingled (*vermisch*) with other items which are not our property, we shall acquire joint title in the new thing in the proportion of the value of the items to which we reserved title to the other commingled items at the time of commingling. If the commingling takes place in such a way that the thing of the supplier is considered to be the principal thing, it is hereby agreed the supplier transfers to us joint title in the new thing in the proportion of the value of our items to the other commingled items; the supplier shall keep the sole title or co-title in custody for us.
4. We reserve title in any tools made on our behalf or provided by us. The supplier shall use such tools exclusively for the manufacture of the goods ordered by us. The tools shall be returned upon termination of the contract for whatever reason.
5. The supplier shall maintain at its costs insurance coverage for our tools against fire, water damage, and theft at replacement value. It shall carry out in due time and at its own costs, any necessary maintenance and inspections. Any incidents shall be promptly notified to us. If the supplier culpably fails to do so, damage claims remain unaffected.

X. Confidentiality

1. The supplier shall keep confidential all documents, information and data, including samples, drawings and calculations which we, orally or in writing, mark or designate as or presume to be 'confidential' and which are made available to it or of which it gains knowledge on the basis of the co-operation ("**Confidential Information**"). Confidential Information includes, in particular, any knowledge about Flabeg's and our companies' processes and business methods in technological, commercial and other respects, knowledge of data and other information relating to the financial situation and human resources management of Flabeg as well as any information on details of project handling. The supplier shall treat the Confidential Information in the same way as its own confidential information, but at least with the due care of a prudent businessman.
2. Any disclosure of Confidential Information to third parties requires our prior written consent. Disclosure of Confidential Information to employees and agents is permitted only to the scope required for the performance of the obligations incumbent on the supplier towards us. The supplier shall also impose the confidentiality undertaking it has entered into on all persons or companies entrusted by the parties with Confidential Information or performance under this agreement.
3. The foregoing obligations shall not apply to information (i) which had been known to the supplier before it received the same from us, (ii) which the supplier developed itself, independently, without recourse to or use of our information, (iii) which the supplier lawfully obtained from third parties who, to the knowledge of the supplier, were not subject to any confidentiality undertaking vis-à-vis ourselves and such third parties, in turn, did not acquire the information through the infringement of

protective provisions in favour of us, (iv) which became known to the supplier without violation of these provisions or any other regulations on the protection of our business secrets or are or were publicly known, or (v) which the supplier must disclose based on statutory, official or judicial order. In this case, the supplier shall inform us prior to the disclosure, and shall restrict as far as possible the scope of such disclosure.

4. Confidential Information shall remain our property and may be neither copied nor reproduced without our prior written consent unless this is imperative for the performance of the obligations incumbent on the supplier under this agreement.
5. This confidentiality obligation shall survive the termination of the cooperation with the supplier.

XI. Compliance, Security Information

1. The supplier guarantees that the goods comply with any applicable provisions and orders as well as with any other applicable regulatory requirements.
2. The supplier shall observe Flabeg GmbH & Co. KG's general security regulations when delivering to or working at our works or another place of delivery specified by us.

XII. Data Protection

Within the scope of the German Federal Data Protection Act (*Bundesdatenschutzgesetz* - "**BDSG**"), we shall be entitled to store and analyse any data, whether it relates to persons or to facts, without any separate notification by us. The supplier agrees to handle data on our company in accordance with the BDSG.

XIII. Place of Jurisdiction, Governing Law

1. If the supplier is a merchant (*Kaufmann*) as defined in the German Commercial Code (*Handelsgesetzbuch*), our registered office shall be the exclusive place of jurisdiction, unless another place of jurisdiction is mandatory. We are, however, also entitled to sue the supplier at the court competent for the supplier's registered office.
2. The laws of the Federal Republic of Germany shall apply. The application of the provisions on Contracts for the International Sales of Goods (CISG - Vienna UN Convention) shall be expressly excluded.

XIV. Final Provisions

1. Without our prior written consent, the supplier shall not, in part or in whole, assign its rights and obligations. We may assign our rights and obligations, in particular to affiliated companies within the meaning of Section 15 of the German Stock Corporation Act (*Aktiengesetz*).
2. Changes or amendments to or cancellation of these General Conditions of Purchase require written form in order to be effective. This also applies to the cancellation of this written form requirement.
3. Should any of the provisions of these terms and conditions be invalid, the validity of the remaining provisions remains unaffected thereby. We shall be entitled to replace invalid provisions to the extent permitted by law with provisions that most closely reflect the intended purpose.
4. The German version of these General Conditions of Purchase shall alone be controlling.