

Terms of Purchase TMS Turnkey Manufacturing Solutions GmbH

These terms of purchase shall apply for all Orders (Supplies and Services) of TMS Turnkey Manufacturing Solutions GmbH and for all its group companies ("**Principal**").

1. Offer / Order

A contractual relationship between the Principal and the supplier including these terms of purchase is concluded if (i) the supplier accepts an offer made by the Principal and/or if (ii) the supplier accepts an order made by Principal. These terms of purchase are integrated parts to the concluded contract.

Only written or emailed orders of the Principal. and/or offers by the supplier are binding. Offers made by the supplier shall be made free of charge and the supplier shall be bound to declarations made in the offer for 60 days. Changes and amendments as well as oral agreements are only valid if they have been confirmed in writing. The *acknowledgement* of each order shall be confirmed in writing by the supplier without repeating the wording of the order. The Principal reserves the right to revoke the order if a confirmation of the order is not received within a reasonable period of time, at the latest within 10 days after the order has been made by Principal. If the confirmation of the order deviates from the wording of the order (new offer by the contractor) the supplier shall expressly indicate any deviations from the wording of the order. The Principal shall only be bound by the deviations if it has given its explicit confirmation.

After the conclusion of the contractual relationship the Principal is entitled to undertake reasonable deviations regarding the performance and the quantity if it is required due to commercial matters and if the deviations are commercially common. All costs (additional or reduced costs) and deadlines which derive out of such deviations shall be mutually agreed upon between Principal and supplier on the basis of the terms of payment which underly the order. Increases in price and in delivery time are only accepted by the Principal if (i) they are unavoidable and it has been proven that they result from deviations of the offer, (ii) they are only subject to minor changes in price and in delivery and (iii) if the supplier has expressly indicated the deviations in writing.

General terms and conditions of the supplier do not apply if they have not been expressly confirmed by Principal. A reference to the offer documents of the supplier by Principal shall not be deemed as acceptance to the commercial conditions of the supplier.

2. Prices and packing

In lack of other agreements, the INCOTERMS 2010 shall apply to the transfer of costs. Prices shall be quoted as fixed prices. Domestic prices are quoted net without value-added-tax. The goods shall be suitably and properly packed in accordance with the standards except in case of special specification. Loading material and packages shall pass into our ownership.

Return shipments are performed at the supplier's risk and expense. Transfer of ownership shall be effected simultaneously with transfer of risk in accordance with INCOTERMS 2010.

3. Delivery time, Destination

Date and/or periods of delivery shall be strictly followed. In case of an earlier delivery, the terms of payment shall not commence earlier than on the contractual date. In case of an early delivery without agreement, Principal reserves the right to charge the cost incurred thereby (warehouse charges, etc.). Foreseeable delays in delivery shall be reasonably notified to Principal immediately, our legal claims remaining unaffected. For the evaluation whether a delivery has been performed on time, receipt at the destination indicated by Supplier ("**Place of Use**") shall be decisive, for the evaluation of the on time performance of a delivery with erection as well as for services, acceptance shall be decisive. In case of foreseeable delays in delivery, in particular in the event of delays in intermediate deliveries, Principal is entitled, without prejudice to further claims, to grant an extension of time and execute a substitute supply at the Supplier's expense. Delivery terms shall be considered fulfilled when the required documentation (e.g. technical, shipping and inspection documents) has been completely furnished.

4. Shipment / Delivery / Transfer of risk

In case of delivery with erection as well as in the case of service the risk transfers upon acceptance. In case of delivery without erection the risk transfers upon receipt at the Place of Use. This transfer of risk shall be applicable irrespective of any other concluded trade term (Incoterm).

Supplier shall comply with all instructions made by Principal in connection with the terms of shipment, forwarder and delivery instructions. Unless the Principal has not selected special instructions or terms of shipment, the supplier shall select a method of shipment which is most favourable to the Principal in terms of dates and costs. In case of shipments having critical deadlines, any special shipment measures whatsoever (e.g. air cargo, express freight service) are subject to the approval of the purchasing department of the Principal.

Unless otherwise specified in the order, the following terms of shipment shall be applicable:

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|-----------------------|---|
| <i>domestic:</i> | DDP named place of destination as per INCOTERMS 2010 |
| <i>international:</i> | FCA named place of departure as per INCOTERMS 2010, cleared for export. |

Moreover, in case of deliveries from abroad, an invoice (in duplicate) and a valid certificate of preference (such as certificate of movement of goods, certificate of origin, etc.) shall be enclosed or attached to the shipping documents respectively.

Shipping advices (delivery bills, delivery advices, packing lists, lists of items of freight, original bills of lading etc.) shall, immediately after dispatch, be forwarded to the

address indicated in the order and enclosed with the waybill (with the exception of bulk goods), in case of air cargo or postal shipment with the consignment *without declaration of value* or in case of shipment performed by forwarding agents, handed over to the forwarding agent with the note „to be handed over to the consignee“.

The *complete order number* as well as the stated *place of unloading* shall be visibly indicated in the waybills, the shipping documents to be forwarded to the recipient, and on the packages (marking, labeling).

All shipping documents, invoices, etc. must include the total weight (gross, net weights). If a *contract item number* is indicated in the order, this number shall appear on all documents and delivery papers. In case the delivery documents corresponding to a certain delivery are not duly and/or delivered on time or if the delivery documents do not include all necessary information or attachments the goods will be stored upon the expenses and risk of the supplier until the duly delivery documents have been received.

Compulsory indications in the C.i.M. waybills and ship's bills of lading:

- for certain announced goods deliveries by train or Danube ship:
Collective goods declaration as per Sect. 52a, Para. 2 ZG"
- in all other cases:
Customs clearance by means of examination at the consignee's works through the customs office in charge".

We shall bear the *costs for transport insurance* only if expressly agreed. Any additional expense incurred by the performance of the order and settled neither in the agreements nor in the INCOTERMS 2010 shall be borne by the supplier.

For the rest, we refer to the shipping and packing guidelines separately taken as a basis, as well as stipulations or regulations of the customs authorities, which are considered an integral part of the terms of purchase.

Unloading place:

TMS Turnkey Manufacturing Solutions GmbH
Wareneingang Südpark Pichling
Bremenstrasse 1-3
A-4031 Linz

Times of delivery:

Monday – Thursday 07:00am – 12:00pm, 12:30pm – 16:00pm
Friday: 07:00am – 12:00pm

Any risk, damage and expense resulting from *non-compliance* with the regulations regarding shipping, packing, customs clearance and documentation as stipulated by the Principal shall be borne by the supplier. Likewise, the due date of the invoice is deferred accordingly until the missing documents are submitted or all contractual conditions are fulfilled respectively.

5. Guarantee

The supplier is liable for the expertly, duly and concluded delivery as well as for the use of the best appropriate and brand-new material in particular and if ordered the proper erection.

Unless otherwise expressly agreed the guarantee period of the supplier for defects of the goods supplied, is 24 months from the start-up or the commencement of use. For services arising from the title of warranty (exchanged and/or a rectified) this period starts anew.

The guarantee period for deliveries with erection as well as for Supplies starts with the acceptance; for deliveries without erection with receipt at the Place of Use. In case of deliveries to places, where the Principal performs services using the delivered goods outside of its plant, the guarantee period starts with acceptance of the Principal's services by the customer. In order to adhere to the period the written notice by the Principal shall be sufficient.

The supplier shall immediately remedy at Principals' option any defects at its own expenses or shall deliver or perform again within the set time period.

The Principal is entitled to claim all damages from the supplier. In case of urgency, such as for the avoidance of its own delay or suppliers' tardiness when correcting any defects, the Principal is entitled to remedy defects or damage or have them remedied by third parties without giving any notice and notwithstanding any further rights which may arise from the title of warranty. All expenses of such remedy are borne by the supplier even if they are higher than the suppliers' expenses for such remedy.

A notice of defect shall be considered filed in time in case of

- a) apparent defects notified six weeks after taking of possession at the latest
- b) hidden defects notified six weeks after detection at the latest.

For goods usually left in their packaging until use, defects made visible not earlier than upon removal of the packaging material shall be regarded as hidden defects.

In case of replacement deliveries and repair the guarantee period starts anew.

6. Liability

The contractor is unrestrictedly liable for damages according to the product liability law. Restrictions of any type of the compensation entitlements being entitled to the ordering party according to this law or other regulations are not accepted.

Without prior written confirmation of the Principal the supplier is not entitled to transfer, pledge or to dispose in any other form over any claims it has against the Principal. The supplier is not entitled to set-off.

Any title retentions by the supplier are not effective.

The supplier is obliged to indemnify and hold the Principal harmless of any

claims and dispute resolutions in connection with any copyright, trademark, or design arising out of the performed Services and/or Supplies and the supplier is liable for unrestricted use of the delivered good. Notwithstanding any other obligation the supplier shall indemnify and hold the Principal harmless of any product liability claims by third parties arising in connection with the delivered goods. Anyhow, the supplier is obliged to compensate any costs which accrued from the defense of such claim or from a compensatory delivery to the Principal. The supplier is obliged to insure such risk and to provide evidence upon Principal's request.

All plants or parts thereof which have been erected or delivered by the supplier have to be equipped with the prescribed safety regulations and have to comply with all applicable safety regulations (for plants or parts of plants in particular with those at site). However, in any case the current applicable rules and the technical regulations have to be observed. In particular the EC guidelines, the Electrical Engineering Act (*Elektrotechnikgesetz*) and all other regulations (in the current version) in this connection as well as the current version of the ÖVE- or rather VDE rules, the technical standards (*technische Ö-Normen*), the DIN standards, the European standards and all similar standards and rules have to be observed.

Any plants and parts thereof, any systems and products delivered by supplier have to be equipped according to the EC-guidelines and according to Austrian law. In case of delivering all conformity assessments together with a short description as well as, if applicable, an assembly instruction and fitting conditions have to be added. Apart from that the supplier has to inform the Principal of all changes in the material, production process and supply components as well as of the conformity assessments, in time.

7. Invoicing

Invoices shall be submitted in single version incl. delivery notes and/or delivery documents, construction accounts in threefold.

The invoice shall clearly show the *order number*, accounting number, the partner number with us, etc.; invoices of services shall be evidenced by confirmations of services.

Notwithstanding these regulations, shipments requiring customs clearance are subject to Clause 4.

Regarding domestic transactions, the invoice shall indicate the V.A.T. percentage, and the V.A.T. amount shall basically be indicated separately, i.e. also for amounts of less than € 100.--. The invoice shall be forwarded to the address of the Principal, Financial Accounting Department, and in case of forwarding to an address other than this, the invoice shall be considered received only when having reached the office of the TMS Transport und Montagesysteme GmbH, Financial Accounting Department.

All invoices have to comply with all regulations and legal and formal requirements of Austria and/or of the country of delivery

Invoice address:
TMS Turnkey Manufacturing Solutions GmbH
(Gaisbergstraße 50, 4031)
p.A. Business Center 281
A-4000 Linz

8. Payment

The term of payment of the invoices starts upon Principals' receipt of the duly issued of the invoice. Unless otherwise expressly agreed, payment will be effected within 45 days from receipt of invoice and proper delivery/performance, with 2% discount or 90 days net. Payment will be either cash or by our own 3 month acceptance or by customer's bill. The Principal reserves the right to extend our acceptance for another three months. The supplier expresses his approval with compensation of claims and liabilities of any kind. This right of compensation also applies to claims and liabilities of companies related with the same group the customer belong to. Cessions of supplier's claims are only permissible if expressly agreed by us in writing. *C.O.D. items* shall not be accepted (unless expressly agreed upon in writing). In case of enforcement of any warranty claim or other claim the Principal reserves the right of retention of any payments to the supplier or the right to set off with any counterclaims of the supplier. The supplier is not entitled to retain payments and/or the goods supplied or rather to up-count in the event of outstanding claims by the Principal.

9. Suppliers' credit rating / Changes in the terms of payment in the event of- threatening – insolvency

In case of bankruptcy or other insolvency proceedings imminent or instituted against the supplier or its sub-contractors or in the event of changes to the status of ownership of the supplier or its sub-contractors, the Principal shall be fully informed without delay. The Principal shall be entitled to immediately take over the Supplies/Services which are in the possession of the supplier or its sub-contractors, and/or to terminate the Contract in whole or in part.

In case of bankruptcy or other insolvency proceedings imminent or instituted against the supplier or its sub-contractors, or in the event of refusal of the latter, the agreed terms of payment shall be amended as follows:

All payments (in whole or in instalments) which have to be made by the Principal to the supplier before acceptance become due once the plant or parts thereof has been accepted by the Final Customer. In this case the payment terms according to the terms of the invoicing shall be applicable.

10. Inquiries, ordering documents, secrecy

Principal retains title to all enclosures with its *inquiries* and *orders* (e.g. drawings, samples, models, etc.) and must not be used otherwise without its consent in writing. They shall be returned to Principal unrequested with the tenders or after execution of the order. The order must not be used for advertising purposes. The order and all relevant data, documents, etc. shall be treated confidentially. On the basis of our inquiry, no compensation shall be granted for the preparation of tenders, drawings, etc.

Tendering includes the agreement that technical tender documents, etc. may be placed at the disposal of engineering partners, etc. for technical examination, with safeguarding measures for secrecy and against assignment, however, without any claims against the Principal. Tender documents will not be returned.

11. Requests, order documents confidential documents

a) Principal reserves the right for itself, final customer and/or the inspection personnel of the latter to carry out progress checks and intermediate and final technical inspections (also inspection of packaging) in the offices, manufacturing shops and warehouses of the supplier and his subcontractors at any time during design, planning, manufacture and preparation of shipment, and to reject faulty documentation as well as defective material. These inspections and checks do not release the supplier from its obligations.

b) The supplier is liable to notify to the Principal any sub-contractor, other than that supplying standard parts shall be notified to, and approved, by Principal. The same applies for the replacement of a sub-contractor.

c) Any material components remain in Principal's ownership and have to be stored separately and free of charge. The takeover has to be confirmed by Principal. The use is only permitted for orders made by the Principal. In case of a reduction in value or any loss the supplier has to provide for compensation. Any compensation claims by supplier due to delay in supply as well as any right of retention of supplier shall be excluded.

12. Place of performance / Place of jurisdiction

Place of performance for Services and Supplies is the Place of Use, for payments corporate seat of the Supplier.

Place of jurisdiction shall be the competent court of the customer at Linz. The supplier shall be engaged to confirm this venue in writing upon request.

13. Applicable law

This Agreement shall be governed by, and interpreted in accordance with Austrian law excluding the Austrian conflict of laws rules and excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

14. Correspondence

All correspondence shall bear the full order number (and inquiry number respectively), reference and date of previous correspondence. Any inquiries whatsoever shall be exclusively addressed to the Principal.

15. Language of the contract and correspondence

The contractual language as well as the language used in the correspondence shall be English.

16. Severability

If any term or provision of this Agreement is or becomes illegal, invalid or unenforceable, all other terms or provisions of this Agreement shall remain legal, valid and. With respect to that term or provision that is or becomes illegal, invalid or unenforceable, the Supplier and the Contractor will agree on such terms or provisions which come as close as possible to the economic result of the illegal, invalid or unenforceable provision.