

Purchasing General Terms & Conditions of Wipf AG

1. Definitions

- 1.1. „Partner“ means the party or parties in contractual relationship to Wipf AG (hereinafter „Wipf“).
- 1.2. „Merchandise“ means the object of purchase or service.

2. Purchase Orders

- 2.1. The following Purchasing General Terms & Conditions shall govern each contract under which Wipf purchases merchandise from the Partner. Any other agreements that regulate the relations between the Partner and Wipf (eg. agreements on quality assurance or confidentiality) shall prevail if they contradict these Purchasing General Terms & Conditions.
- 2.2. General Terms & Conditions of the Partner shall only apply if accepted by Wipf in written form. They shall not apply if unilaterally communicated, transmitted or referred to by the Partner during the closing of the contract or during contractual execution, in particular as part of a delivery order or delivery receipt or invoice. Acceptance of purchased merchandise or payment of invoices by Wipf shall at any rate not be understood as an acceptance of the Partner's General Terms & Conditions.
- 2.3. Any declaration of acceptance (even marginally) deviating from the order placed by Wipf shall be considered as counteroffer by the Partner unless Wipf a) has been particularly notified by the Partner regarding such deviation and b) confirmed acceptance with such deviation.
- 2.4. Orders and/or amendments/modifications of purchase or service orders shall be binding only if made in writing and signed by authorized representatives of the Parties. Orders transmitted by specific IT-tools, particularly Electronic Data Interchange, shall be considered as made in writing.

3. Drawings, other Documents, Intellectual Property

- 3.1. The Partner shall use his expertise independently, i.e. without Wipf's request, to check all drawings, calculations, specifications and other requirements sent to him by Wipf for errors, inconsistencies and discrepancies. Recognizable errors, inconsistencies or discrepancies shall be immediately communicated in writing to Wipf.
- 3.2. In case of contracts whose subject is the solution of a technical problem, any intellectual property rights arising from such solutions shall belong to Wipf, as shall other technical solutions or know-how which is not state of the art. The Partner herewith transfers any such intellectual property rights (e.g. patents, copy rights) to Wipf free of charge or remuneration.

4. Time and Place of Performance; Partial Performance

- 4.1. The delivery time set by Wipf in its order shall be binding. The Partner shall communicate to Wipf any problem he might have with the delivery in writing and without delay on learning of such problem.
- 4.2. The merchandise shall be delivered DDP (Incoterms 2010). The place of destination shall be the domicile of Wipf, unless otherwise agreed in writing. The merchandise shall be delivered in condition as agreed by the Parties. The delivery of the merchandise shall include all necessary verifications, certifications and documents of origin.
- 4.3. Shipments are to be made on time, according to the date specified in the order. Wipf has the right to reject a shipment that is early or to send it back to the Partner, at the Partner's expense. Is the early shipment accepted by Wipf, then its storage at Wipf shall be at the Partner's risk and expense. In this case, payment of the invoice shall be governed by the due date (as opposed to the early shipment date).
- 4.4. Wipf shall not be obliged to accept partial or incomplete deliveries.

5. Warranty

- 5.1. The Partner warrants the merchantability of the delivered merchandise. Furthermore, the Partner warrants its fitness both for the agreed purpose and for Wipf's purpose which is recognizable to him.
- 5.2. The Partner represents that the delivered merchandise corresponds in quantity and quality to the order and the agreed specifications. The regulations about the buyer's obligation to examine delivered merchandise and notify the seller immediately of any defects is expressly waived. Wipf may notify defects any time within the warranty period.
- 5.3. The Partner represents that the merchandise is compliant with all laws, all administrative regulations and all rules laid down by professional associations which apply at the place of delivery and the place of destination of the merchandise and which are in force at the time when Wipf places the order, and to all environment, safety and worker protection rules.

- 5.4. In case of a breach of warranty or misrepresentation, Wipf shall have the right, without prejudice to other remedies available to Wipf under law, to choose between rectification, replacement, rescission, and price reduction. Because of the breach of warranty, the Partner shall get in case of rescission no remuneration for any use Wipf has had of the merchandise. In addition Wipf reserves the right to claim damages. Such damage claim shall not presume fault on the part of the Partner.
- 5.5. The warranty period shall be at least 24 (twenty four) months, starting with delivery of the merchandise. Deviating periods in technical data sheets or specifications prevail. The warranty period for buildings or for fixed installations into buildings shall be 5 (five) years, starting with the handover protocol duly signed by Wipf.
- 5.6. The Partner shall indemnify Wipf from all costs associated with product liability, provided the merchandise has been the cause of the product liability claim. On demand, the Partner shall document to Wipf that the product liability risk is sufficiently covered by insurance.

6. Remuneration and Payment

- 6.1. The following payment term shall apply: 14 days 3% discount, 45 days net.
- 6.2. Without a correct and complete invoice and the receipt of the merchandise by Wipf, the purchase price shall not become due. In particular, it should be noted that the invoice shall contain all legally required data, with special consideration to the Value Added Tax Law where applicable. Such data shall include at least the proper designation of the invoice recipient and the correct presentation of the Value Added Tax where applicable. In addition, the Partner's invoice must quote Wipf's order number and Wipf's reference and item number(s).
- 6.3. Once the final invoice has been submitted to Wipf, the Partner may make no further belated claims for remuneration.
- 6.4. The Partner may assign claims against Wipf to third parties only after prior written consent by Wipf.
- 6.5. Set-off by Wipf is permitted with claims that are due.

7. Third Party Rights, Know-How, Confidential Information

- 7.1. The Partner guarantees that the use or purchase of his merchandise by Wipf does not infringe any third-party rights. Without prejudice to the right of Wipf to demand rescission or damages in case of such an infringement, the Partner shall indemnify Wipf from all such third party claims.
- 7.2. The Partner shall not make use, neither for himself nor for third parties, of any Wipf know-how and any confidential information, which he has received from Wipf in the course of contract negotiation or contract performance, in particular of documents handed over to the Partner by Wipf. However, this obligation may be waived by Wipf in a prior written statement. The Partner shall bind his employees to the same obligations regarding confidential information. Where Wipf and the Partner have agreed differently on confidentiality matters, such different agreement shall prevail.
- 7.3. Both Wipf the Partner will not disclose any confidential information received by the discloser to any person, firm, corporation, agency or other entity. This obligation shall survive the termination of the current agreement by 5 (five) years.
- 7.4. Documents handed over by Wipf may not be copied by the Partner without prior consent by Wipf. Upon the termination of the contract, the Partner has to return them without delay, and delete electronically recorded documents.

8. Miscellaneous

- 8.1. The law of the country in which Wipf has its seat shall apply. For contracts for the international sale of goods the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980; CISG) shall apply.
- 8.2. The parties agree to submit to the jurisdiction of the court of law at the seat of Wipf.
- 8.3. If the contract between the parties has been issued fully or partly in different languages, the German version shall prevail. In case none of versions is issued in German, the English version shall prevail and the other version shall be considered a translated version.
- 8.4. Apart from what has been concluded in writing, no oral agreements exist. Contract amendments shall not be valid unless executed in writing.
- 8.5. Should one or more contract provision(s) be or become invalid, this invalidity shall not be constructed as affecting the validity of the whole contract. The invalid provision(s) shall be replaced so that the new text is both valid and its meaning as close as possible to the economical meaning and purpose of the provision(s) replaced.