

Raffinerie Heide GmbH General Purchasing Terms - Material

These General Purchasing Terms apply exclusively to purchase agreements and contracts for labor and materials (§§ 433, 651 of the Civil Code (BGB)).

1. Closing

Orders are placed subject to our General Purchasing Terms only and irrespective of whether you produce the goods or products in question yourself or purchase them from suppliers (§§ 433, 651 BGB).

The General Purchasing Terms further apply to all similar future agreements without the need for further reference. Changes to our General Purchasing Terms go into effect on the day of their introduction or, at the latest, upon notice in text form.

Agreements or delivery terms contradicting our General Purchasing Terms are valid only insofar as we expressly recognized them in writing. The requirement as to our approval applies regardless of circumstances and even if we accept delivery without reservation despite being aware of your general terms and conditions.

Only written orders are legally binding in nature, whereas orders communicated orally or by telephone are subject to written confirmation. We do not offer compensation of any kind for, and will not reimburse you for expenses incurred in connection with, visits or the preparation of proposals, projects, etc.

2. Delivery dates, default in delivery

The delivery dates stated in our orders are binding in nature, and delivery dates or periods are deemed to have been observed only if the goods or products are received in full and free of defects at the place of receipt or use we specified, or if we have formally accepted deliveries or services.

Should you realize that an agreed deadline cannot be met for whatever reason, you must immediately inform us in writing, specifying the reasons as well as the expected length of delay.

In the event that you do not render performance within the agreed delivery period, or if you are in default regarding performance, our rights, including but not limited to those with respect to rescission and damages, conform to applicable law. Our acceptance of late deliveries or performance must not be construed as a waiver of any claims for compensation; the clause in paragraph 3 is not affected.

In cases of default in delivery (§286 BGB), we may demand payment of a contractual penalty in the amount of 0.5% of the net price per full calendar week – up to 5% of the net price of the goods or products delivered late. The right to assert additional claims, including for damages, is expressly reserved. Claims for damages are adjusted by contractual penalties.

They are asserted upon the delivery of delayed performance, but no later than upon the final payment. If delivery is effected sooner than agreed, we reserve the right to return the goods or products at your expense. If, in cases of early delivery, the goods and

products in questions are not returned, we or a third party will store them at your expense and risk until the agreed delivery date. Payment for early deliveries is not due sooner than it would be if delivery had been effected on the agreed date.

We accept partial delivery subject to written agreement. Approved partial deliveries must note the quantity then outstanding.

3. Rates

The agreed rates are fixed prices and exclude additional claims of any kind. If the order does not state prices, your usual list prices apply, including customary discounts.

Unless specifically agreed otherwise, rates include all services and ancillary services (e.g., assembly, installation) as well as all incidental costs (e.g., proper packaging, handling and shipping to the place of receipt or use provided, including transport and liability insurance as needed).

4. Performance, delivery, shipment, transfer of risks, packaging

You are not entitled to delegate the order to third parties without our approval. Insofar as you involve third parties, such third parties are deemed your agents.

You bear the procurement risk for your services unless specifically agreed otherwise (e.g., limited to supplies on hand).

Deliveries are made free of charge to the place of receipt or use provided, and such destination also serves as the place of performance and any remedial performance owed.

Each delivery is to be accompanied by a delivery certificate stating the date (of issue and shipment) as well as the content (exact breakdown by type, number of units and weight) of the shipment. In addition, we are to be notified of each pending delivery in the form of a corresponding notice of shipment which, along with consignment notes, invoices and all other correspondence, must include our order number. We will only accept delivery of the volume or number of units we ordered.

Insofar as material testing or analysis certificates, etc. were agreed, such certificates form an essential part of performance; they are part of the scope of delivery and must be sent out to the corresponding shipping address for the goods or products in question immediately upon dispatch.

Shipments fall within your sphere of risk, and the risk of accidental demise or deterioration does not pass to us until delivery has been made to the place of receipt or use provided, or until acceptance, even if shipment has been agreed.

Your obligation to take back any packaging is subject to applicable law. You will have shipping, “overpack” and other packaging picked up and disposed of at no charge. In the event that we are separately invoiced

for packaging, we are entitled to send back to you, at your expense, any packaging in good condition in exchange for a refund of two thirds of the corresponding value according to the invoice.

5. Invoicing and payment

Following delivery, you must submit proper invoices to us in duplicate (one being clearly marked as a copy) and accompanied by all related documents and data. Payment is made in full (net) and as is customary by the 30th day of the following month on the basis of delivery or performance (including any agreed acceptance) and the receipt of a proper invoice.

In cases of defective deliveries or performance, we may withhold a pro-rated portion of payment until performance has been rendered in full.

We owe no interest on payments in arrears. Instead, default in payment is subject to applicable law.

6. Rights based on defects

Our rights in cases of material or legal defects of the goods or products (including deliveries of wrong or fewer items as well as defective installation, operation or service manuals) or other breaches of duty are subject to applicable law unless provided otherwise below. Under applicable law, you are liable for ensuring that the goods or products are in the agreed condition when the associated risks pass to us. For purposes of the law, the agreed condition encompasses, at a minimum, the description of such quality and other characteristics of the goods, products or performance as may be incorporated into a given contract by reference in our order or otherwise along with these General Purchasing Terms – e.g., as a result of advertising, analytical data, product brochures, etc. In this respect, it makes no difference whether the information in question was provided by you or the manufacturer.

Any agreed deliveries and performance must reflect the recognized state of technology, pertinent legal provisions and applicable rules from the authorities, trade associations and industry groups.

The obligation as to inspection and the reporting of defects applies as provided by law (§§ 377, 381 HGB) subject to the following condition: Our obligation to inspect is limited to defects that are clearly visible when subjecting goods or products (including delivery papers) to a superficial examination as part of our inspection of incoming goods as well as during quality control using the sampling method (e.g., damages sustained during transit, deliveries of wrong or fewer items). Insofar as formal acceptance has been agreed, the need for an inspection is waived.

Otherwise, what matters is the extent to which an inspection would be advisable in the regular course of business in consideration of the circumstances of a given case. Our obligation to report defects for those detected at a later point in time is not affected. Regardless of circumstances, a report we submit on a defect (notice of defect) is deemed to have been made promptly and in a timely fashion if you receive it within five business days. You will bear the costs you incur for purposes of inspection and remedial

performance (including the costs of deinstallation and/or reinstallation) even it is found that there was in fact no defect, although we remain liable for damages in cases of unjustified requests for the removal of defects; to such extent, however, we only bear liability if we have recognized – or failed to recognize on account of gross negligence – that there was no defect. Such limitation of liability does not extend to damages resulting from injuries to life, body and/or health.

You must remove defects in delivery or performance, which include the failure to achieve guaranteed qualities or shelf life, within a reasonable period set by us, and do so free of charge, including any and all ancillary costs, and, at our option, by means of repair or by replacing either the defective parts or the entire article or product.

Subject to applicable law, we are entitled to abate the purchase price or rescind the agreement in the event of material or legal defects and may assert claims for damages and/or indemnification.

In the event that you fail to effect remedial performance within a reasonable period set by us, we may remove the defect ourselves or have a third party do so and demand that you reimburse us for any related expenditures or pay an advance thereon. If your remedial performance fails to remove the defect, or if such performance would place an unreasonable burden on us (e.g., due to special urgency, risks to operational safety or the possibility of disproportionate damages), no deadline has to be set. Instead, we will inform you of any such circumstances immediately and, whenever possible, in advance.

7. Product liability

If third parties assert claims against us on account of personal injury or property damage that stems from a defective product you supplied, you must release and hold us harmless from any resulting liability.

As part of your indemnity obligation, you must also reimburse us for expenditures associated with recall campaigns (including our own) arising from or in connection with third-party claims. To the extent possible and reasonable, we will inform you of the terms and scope of any recall campaign and provide you with an opportunity to comment. Additional legal claims are not affected. You must obtain insurance against all risks related to product liability, including the risk of recall, in an adequate amount and produce such insurance policies for our review upon request.

8. Limitation

The contractual partners' mutual claims expire in accordance with applicable law unless provided otherwise below.

In deviation from § 438 (1) no. 3 BGB, the general period of limitation for defect-based claims equals three years from the transfer of risk. Insofar as formal acceptance has been agreed, the period of limitation commences upon such acceptance. The three-year period of limitation applies accordingly to claims based on legal defects, whereas the statute of limitation for third-party claims for surrender in rem (§ 438 (1) no. 1

BGB) is not affected. Furthermore, claims based on legal defects must not expire under any circumstances while the third party is still in a position to assert claims against us – especially if such right is not yet time-barred.

Insofar as we are entitled to non-contractual claims for damages on account of defects, the regular period of limitation applies (§§ 195, 199 BGB) unless that prescribed by applicable sales law is longer.

With respect to parts to be supplied that could not remain in operation while defects are examined and/or removed, the applicable period of limitation for claims based on defects is extended by the time of such business interruption. For spare parts supplied, the period of limitation for claims based on defects then commences anew.

9. Confidentiality and retention of title

We reserve the title and copyright to images, plans, drawings, calculations, execution instructions, product descriptions and other documents; items of this nature are to be used only for purposes of contractual performance and must be returned to us once the agreement has been fully implemented. In relations with third parties, these items must be held in strict confidence even beyond the term of the agreement, and such duty of confidentiality does not expire until – and only to the extent that – the information contained in the items provided has become public knowledge. The foregoing provision applies accordingly to fabrics and materials (e.g., software, finished and semi-finished products) as well as to tools, templates and other items we provide for production purposes. Unless they are processed, you must store such items separately and adequately insure them against destruction and loss.

Any processing, blending or combining (further processing) you do of items provided is done on our behalf only, and the same is true for our processing of goods or products provided, to the effect that we are considered the manufacturer and, subject to applicable law, acquire the title to the product upon processing, at the latest.

The title and copyright to documents, drawings, drafts, electronic data-processing programs, files, etc. you create for us, including but not limited to special orders, pass to us without special compensation. You must not use, duplicate or disclose these documents to third parties for unrelated purposes, and they must be returned to us upon order completion.

The transfer of any goods or products to us must be effected unconditionally and without regard to payment. However, in the event that we accept a conditional offer of transfer that is contingent on payment of the purchase price, your retention of title lapses with such payment, at the latest. In the regular course of business, we remain entitled, even prior to the payment of the purchase price, to resell the goods or products by assigning the claim thereto in advance (alternatively, simple retention of title as extended to resale). Retention of title in any other form, including but not limited to such retention of title as may be

expanded, passed on or extended to include further processing, is excluded.

10. Assignments, setoff

Absent our prior consent, which must not be withheld unreasonably, you are not entitled to assign your claims against us, monetary claims excepted. Setoff is limited to undisputed and effectively established claims as well as those hereunder within the meaning of § 320 BGB, and only with respect to such claims may you exercise a right of retention. We are entitled to adjust your claims by any to which we or an enterprise affiliated with us within the meaning of § 15 of the Companies Act (AktG) are entitled.

11. Property rights

You guarantee that any and all supplies are free from third-party property rights and, specifically, that the delivery and use of supplied items do not infringe upon patents, licenses or other third-party property rights. Moreover, you indemnify and hold us harmless from and against third-party claims related to such property rights. We are entitled to obtain licenses for the use of goods and services from the beneficial owners at your expense.

12. Miscellaneous

These General Purchasing Terms and the contractual relations based thereon are subject to the laws of the Federal Republic of Germany, to the exclusion of international uniform law, including but not limited to CISG. In the event that individual provisions of these General Purchasing Terms are or become ineffective or unenforceable, the remaining provisions hereof continue in full force and effect, and the parties hereto will replace the ineffective or unenforceable provision with one that best approximates the ineffective or unenforceable provision and achieves the intended economic outcome to the extent permitted by law. These rules apply accordingly in cases of contractual gaps.

To the extent permitted, the legal venue is Hamburg.