

## **BerlinerLuft. General Terms and Conditions of Purchase**

### **1. General**

1.1. Any terms and conditions of the Supplier which deviate from these General Terms and Conditions of Purchase or complement them shall not be binding on the Orderer, even if the Orderer does not object to them or the Supplier states that he wishes to perform deliveries only on his own terms and conditions.

1.2. If the Orderer has informed the Supplier of the intended purpose of the delivery items or if such intended purpose can be identified by the Supplier even if it is not pointed out expressly, the Supplier shall be obliged to inform the Orderer immediately if the deliveries are not suitable for the intended purpose.

1.3. The Supplier shall be obliged to confirm the order in text form within a period of three working days unless the delivery or service has been performed in the meantime. Any late acceptance shall be considered as a new offer and require acceptance by the Orderer.

1.4. Orders must be placed in text form. Oral orders, changes or additions to orders shall only be binding if they have been confirmed by the Orderer in writing.

1.5. Any subcontracting of orders to third parties shall not be permitted without the Orderer's consent and entitle the Orderer to withdraw from the contract completely or partly and to claim compensation.

1.6. The Supplier shall provide all documents of proof (e.g. certificates of origin) which are needed by the Orderer for being granted customs or other privileges.

### **2. Delivery Date**

2.1. Agreed delivery dates shall be binding and shall be dates of availability to, or receipt by, BerlinerLuft. The timeliness of deliveries without assembly or installation shall depend on the receipt at the shipping address indicated by the Orderer; the timeliness of deliveries with assembly or installation and of services shall depend on their acceptance.

2.2. The Orderer shall be informed immediately, in writing, of any circumstances which jeopardise the compliance with agreed delivery dates so that further steps can be discussed. The Orderer's right to withdraw from the contract and claim compensation for non-performance if appropriate shall remain unaffected.

2.3. The Orderer reserves the right to claim a contractual penalty until the payment for the last delivery or service to be performed as part of the order.

2.4. Furthermore, the Orderer shall be entitled to claim compensation for the damage exceeding the contractual penalty. The contractual penalty shall be offset against the compensation.

### **3. Dispatch and Passing of Risk**

3.1. Unless otherwise agreed, the shipping and packing costs, customs duties, fees and other charges shall be borne by the Supplier. If prices are ex works or ex warehouse of the supplier, deliveries shall be performed at the lowest cost in each case unless the Orderer has required a particular mode of transport. Additional costs due to non-compliance with a shipping or packing instruction or for any accelerated delivery necessary for the compliance with a delivery date shall be borne by the Supplier. If prices are free domicile, the Orderer may still give instructions after the conclusion of the contract. If additional costs are incurred by the Supplier as a result, the Orderer shall reimburse them if the Orderer has been informed of such costs by the Supplier – with the difference amount being specified – and leaves his instructions unchanged nevertheless.

3.2. Packing slips or delivery notes indicating the content, the order number and other order references shall be enclosed with each delivery. The Orderer shall be sent dispatch notes containing the same information no later than the time of dispatch. If the required dispatch documents for a delivery are not received on time through the Supplier's fault or if the above information is missing in the dispatch documents, the goods shall be stored at the Supplier's risk and expense until the receipt of the dispatch documents or of the complete information.

3.3. In the case of deliveries without installation or assembly, the risk shall pass upon their receipt at the shipping address indicated by the Orderer. In the case of deliveries with assembly or installation and of services, the risk shall pass upon the acceptance to be performed at the place of installation.

### **4. Insurance**

Costs of the insurance of the goods, particularly of any forwarding insurance, shall not be borne by the Orderer unless otherwise agreed.

### **5. Invoices**

Invoices shall be issued separately for each order/delivery, indicating the order number and other order references, and sent to the Orderer's address unless a different invoice address is indicated in the order. Duplicates of invoices shall be marked as such. The value added tax shall be indicated separately in the invoices. Improper invoices shall be returned to the issuer. Collective invoices may only be issued after prior agreement.

## 6. Payments

6.1. Payments shall be made on the conditions agreed in the order or supply contract, as the case may be.

6.2. Unless otherwise agreed, the period for payment shall commence as soon as the delivery or service has been performed completely and the proper invoice has been received. If the delivery or service is connected to an assembly or commissioning which shall be performed by the contractor, the period for payment shall commence upon the acceptance of performance by the Orderer. If the Supplier has to provide material tests, test reports, quality documents and other documents, the receipt of such documents shall also be required for the completeness of the delivery or service. However, the period for payment shall not commence before the agreed delivery date.

6.3. Payments shall not constitute an acceptance of the deliveries or services as being in compliance with the contract.

## 7. Assignment or Pledging

The assignment or pledging of contractual claims shall only be effective with the Orderer's written consent. The Orderer shall not refuse such consent without cause.

## 8. Warranty

8.1. The Supplier warrants that the deliveries or services correspond to the agreed specifications, have the guaranteed characteristics and do not have any defects which reduce their value or prevent or reduce their suitability for their customary use or their use assumed according to the contract. Furthermore, the Supplier warrants that, unless specific rules have been agreed, the deliveries and services correspond to the recognised rules of engineering, the applicable environmental protection, accident prevention and other industrial safety regulations and the generally recognised safety and occupational health rules applicable in the Federal Republic of Germany.

8.2. Before the commencement of production or before the performance of the services, the Supplier shall inform the Orderer in writing of any changes in the form of composition of the processed material or in the design as compared to similar deliveries or services which were performed earlier for the Orderer. The changes shall require the Orderer's written consent.

8.3. Complaints due to defective delivery, wrong delivery or incorrect quantities may be made by the Orderer within 8 days after the passing of risk. If a matter about which a complaint must be made is only discovered when the deliveries or services are processed or put into use, the Orderer may still complain about it within 8 days after its discovery. If incoming goods inspections in a spot-check procedure have been agreed, the Orderer may reject the delivery completely or check 100% of it at the Supplier's expense if the agreed critical quality value is exceeded.

8.4. The warranty period shall be 2 years if the order only comprises deliveries. If the delivered item is installed in a building structure or has been intended for a building structure in accordance with its customary manner of use, the warranty period shall be 5 years. If the contract provides for longer warranty periods, such periods shall apply.

8.5. In the case of material defects, the Orderer may, at his choice, assert the statutory warranty claims; in particular, he may demand supplementary performance in the form of replacement or repair by the Supplier, also at the place of use, which the Supplier shall carry out immediately without any costs (particularly transportation, travel, labour or material costs) being incurred by the Orderer.

8.6. If the Supplier does not carry out the supplementary performance within a reasonable period to be fixed by the Orderer, the Orderer shall be entitled to withdraw from the contract completely or partly or to demand a reduction of the purchase price or to perform a repair or replacement himself, or have it performed, at the Supplier's expense. Furthermore, he shall be entitled to demand compensation instead of performance.

8.7. The orderer may make his choice concerning his warranty rights using equitable discretion.

8.8. For repairs, replacements and compensatory services, the Supplier shall provide the same warranties as for the original deliveries and services.

8.9. Any further statutory claims of the Orderer – particularly those concerning guaranteed characteristics – shall remain unaffected.

## **9. Claims for Supplier's Recourse**

9.1. The Orderer shall be entitled to his statutory claims for recourse within a supply chain (supplier's recourse under Art. 445a, 445b and 478 of the German Civil Code (BGB)) without restriction in addition to his claims for defects. In particular, the Orderer shall be entitled to demand of the Supplier exactly the same type of supplementary performance (repair or replacement) that he owes to his customer in the individual case. The statutory right of choice (Art. 439 par. 1 BGB) shall not be restricted thereby.

9.2. Before the Orderer acknowledges or satisfies any claims for defects asserted by his customer (including claims for the reimbursement of expenses pursuant to Art. 445a par. 1 and Art. 439 par. 2 and 3 BGB), he shall inform the Supplier, briefly describing the matter and asking for a written comment. If a substantiated comment is not submitted within a reasonable period and no solution is found amicably either, the claim for defects which is actually acknowledged by the Orderer shall be considered owed to his customer. In such case, it shall be for the Supplier to provide evidence to the contrary.

9.3. The Orderer's claims for supplier's recourse shall apply even if the defective goods have been processed further by the Orderer or another business, e.g. by installation in another product.

## **10. Producer's Liability**

10.1. If the Supplier is responsible for any product damage, he shall indemnify the Orderer against third-party claims insofar as the cause of such damage lies within his area of control and organisation and he is liable himself in his external relationship.

10.2. As part of his indemnity obligation, the Supplier shall reimburse expenses under Art. 683 and 670 BGB which arise from or in connection with third-party claims, including product recalls from the part of the Orderer. Insofar as it is possible and reasonably acceptable, the Orderer shall inform the Supplier of any product recalls and give him the opportunity to comment. Any further statutory claims shall remain unaffected.

## **11. Industrial Property Rights**

11.1. The Supplier shall be liable for ensuring that the deliveries and services do not infringe any third-party industrial property right, also with regard to their use.

11.2. The Supplier hereby grants the Orderer the non-exclusive, transferable right, for an unlimited period, to

- use the deliveries and services, integrate them into other products and distribute them,
- use software and the accompanying documentation, or have them used, in connection with the installation, commissioning, testing and operation of the software,
- sublicense the above-mentioned right of use to affiliates, other distributors and end customers,
- use and copy software, if any, for the integration into other products, unless otherwise agreed by the Parties contractually.

## **12. Liability**

Unless otherwise stipulated in these Terms and Conditions, the statutory provisions shall apply to liability.

## **13. Property of the Orderer**

Models, samples, production facilities, tools, measuring and test equipment, supplied materials, drawings, works standard specifications, master copies and the like which are provided to the Supplier by the Orderer shall remain property of the Orderer.

They shall be kept safe by the Supplier free of charge with the diligence of a prudent businessman, marked as property of the Orderer and used by the Supplier only for the performance of the deliveries and services for the Orderer. They may only be made accessible to third parties with the Orderer's prior written consent (secrecy), and their return may, unless otherwise agreed expressly in the individual case, be demanded by the Orderer at any time.

## **14. Spare Parts**

14.1. The Supplier shall be obliged to supply spare parts on reasonable conditions for the expected period of technical use, but at least for 10 years after delivery.

14.2. If the Supplier ceases the production of the spare parts, the Supplier shall be obliged to give the Orderer the opportunity to place a final order and/or to deliver to him, on request, all devices and documents necessary for the manufacture of the spare parts and permit him to use them free of charge.

## **15. Bankruptcy/Insolvency of the Supplier**

If the Supplier ceases his payments, a temporary insolvency administrator is appointed or insolvency proceedings concerning the Supplier's assets are filed for or opened, the Orderer shall be entitled to terminate the contract completely or partly for cause without notice. In such case, the Orderer may utilise the Supplier's facilities existing for the continuation of the work or any deliveries and services previously performed by the Supplier, against adequate remuneration.

## **16. Place of Jurisdiction, Applicable Law**

The place of jurisdiction shall be the Orderer's place of business, insofar as this is permitted. Only German law shall apply to the contract, with the United Nations Convention on Contracts for the International Sale of Goods (CISG) being excluded.

### **BerlinerLuft. Technik GmbH**

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