

## **General Terms and Conditions of Purchase of Ortlinghaus-Werke GmbH**

### **1. Scope of application**

- 1.1 The General Terms and Conditions of Purchase of Ortlinghaus apply exclusively. We shall not recognise the Supplier's terms and conditions of purchase if they differ from, or are contrary to, our terms and conditions, unless we have expressly agreed to them in writing in a specific case. Our terms and conditions of purchase shall also apply in those cases in which we accept a Supplier's consignment without reservation while being aware that his terms and conditions of business differ from, or are contrary to our own.
- 1.2 These terms and conditions of purchase shall constitute an integral part of all future orders placed by Ortlinghaus. They shall also apply for follow-up orders without Ortlinghaus having to refer to these terms and conditions again.
- 1.3 The terms and conditions of purchase shall only apply for business undertakings.

### **2. Offers – Contractual documents**

- 2.1 The Supplier's offers are to be submitted in writing. Cost estimates are not subject to remuneration.
- 2.2 Ortlinghaus shall reserve the right of title and copyright to diagrams, drawings, calculations, models, appliances, specimens and other documents which have been handed over by Ortlinghaus to the Supplier to prepare an offer or to carry out an order. The Supplier shall have to insure all the above named documents against fire at his own expense.
- 2.3 The documents and items named in No 2.2 must not be made available for third parties unless Ortlinghaus has granted its written consent in advance. The documents and items are only to be used for processing and handling the order and are to be returned to Ortlinghaus after the respective order has been completed without Ortlinghaus having to request their return. The documents and items are to be kept secret from third parties.

### **3. Orders**

- 3.1 The Supplier shall be obliged to accept an order placed by Ortlinghaus within 10 days.
- 3.2 If the order is not confirmed by the Supplier in writing within 10 days from being placed, Ortlinghaus shall consequently be obliged to revoke its offer to enter into a contract within the following 14 days. The Supplier shall not accrue any rights whatsoever from revocation by Ortlinghaus.
- 3.3 If order acceptance or confirmation by the Supplier differ from the order placed by Ortlinghaus, the Supplier must point this out explicitly to Ortlinghaus. In this case an order shall only materialise after it has been confirmed in writing by Ortlinghaus.
- 3.4 If Ortlinghaus does not respond to an order accepted by the Supplier which differs from the order he placed with the Supplier, this shall be regarded as a rejection of the order by Ortlinghaus.
- 3.5 Orders shall only be binding upon Ortlinghaus in those cases in which they have been or will be confirmed in writing by the purchase department at Ortlinghaus. This shall also apply for supplements or amendments. Ortlinghaus may refuse to take delivery of and to pay for consignments not delivered on the basis of a proper written order. If there should be ambiguities in the order, these shall have to be clarified by the Supplier requesting further information in writing.
- 3.6 The sub-contracting of work to a sub-contractor shall be subject to the prior written consent of Ortlinghaus.

### **4. Prices – Terms of Payment**

- 4.1 The price shown in the order shall be binding. In the absence of a written agreement otherwise, the price shall include delivery franco domicile, including packaging.
- 4.2 Unless specified otherwise, the statutory value added tax is to be included in the price.
- 4.3 Payment may be made, as Ortlinghaus chooses, either 14 days from the receipt of invoice and receipt of goods with a discount of 3%, or 60 days from the receipt of invoice net in full. The invoiced amounts may not be assigned to third parties.
- 4.4 Prices may not be increased subsequently as a result of an increase in costs, regardless of the reason for them, unless an express agreement has been made otherwise.

4.5 In so far the prices have not been stated in the order placed by Ortlinghaus, the Supplier shall have to state them in his order confirmation. In this case the contract shall only materialise following a subsequent written confirmation by Ortlinghaus.

4.6 Should, by way of exception, prices be agreed ex works, ex the Supplier's stores or ex third party stores, all the costs consequently incurred until the goods are handed over to the carrier including loading and cartage shall be for the Supplier's account.

## **5. Delivery date**

5.1 The delivery dates or delivery periods stated in the order are binding and shall be counted from the date of the order.

5.2 The Supplier is obliged to inform Ortlinghaus without undue delay if circumstances arise or which he becomes aware of, the result of which is that the stipulated delivery time cannot be satisfied. If he breaches this notification obligation he shall consequently also be liable for late deliveries for which he is not to blame. Notification of such delays or the failure of Ortlinghaus to respond to such a notification shall not constitute acceptance of the new delivery date.

5.3 In the event of a delay in delivery, Ortlinghaus shall be entitled to demand 0.5% of the proportion of the order value for the outstanding part of the consignment as a lump sum for default damages for each working day of the delay, not, however, to exceed a total of 5% of the order value. Additional statutory claims shall not be affected by this provision. In particular, Ortlinghaus shall be entitled to demand compensation for damages instead of fulfilment after a reasonable period of time has elapsed without the late parts being delivered, and to withdraw from the contract. The Supplier is entitled to prove that Ortlinghaus has not suffered any loss at all or a much smaller loss as a result of the default.

5.4 If Ortlinghaus is unable to carry out acceptance for the consignment as a result of force majeure or circumstances which it is unable to avert in spite of taking reasonable care, (e.g. labour disputes, operational breakdowns, unforeseen and unavoidable changes in production methods and other circumstances which may result in a reduction of demand as a result), Ortlinghaus may demand delivery at a later point in time without this giving rise to claims against Ortlinghaus.

5.5 The Supplier shall have to formally request that Ortlinghaus take delivery of a consignment and set him at least two weeks to do for Ortlinghaus to be in default with taking delivery of a consignment. Ortlinghaus shall only be in default with taking delivery of a consignment in those cases in which Ortlinghaus would not have been able to reject the acceptance of the goods supplied.

5.6 If consignments are delivered prior to the specified delivery date, Ortlinghaus shall consequently reserve the right to return the goods at the Supplier's risk and to invoice the supplied for the costs incurred by Ortlinghaus as a result (e.g. demurrage) and to pay the invoice when it would have been due had the goods been delivered on time.

## **6. Transfer of risk**

6.1 All consignments are to be delivered carriage free and expenses free at the Supplier's risk to the Ortlinghaus factory. Carriage is to be paid by the consignor at the point of despatch. Ortlinghaus will not pay the transport insurance. If express or speedy delivery is necessary as a result of the Supplier being at fault, the additional costs incurred shall also be for his account. The goods are to be packed as appropriate in compliance with the general rail and haulage terms and conditions.

6.2 A delivery is to be attached to every consignment in duplicate. The delivery notes must contain detailed information about the contents as well as the Ortlinghaus order number. Partial deliveries are only allowed with the express consent of Ortlinghaus.

## **7. Invoices**

7.1 Invoices are to be sent out separately from the consignment and in duplicate.

7.2 Only the dimensions, weights and unit quantities shall count for the purposes of offsetting.

7.3 Invoices can only be processed by Ortlinghaus if they include the order number – this requirement is stated in the order. The Supplier shall be responsible for all the consequences arising from non-compliance with his obligation unless he is able to prove that he is not responsible for non-compliance.

**8. Condition – Regulatory instructions**

- 8.1 It is mandatory that the object of purchase has the features or characteristics shown in samples or quality control agreements as agreed quality characteristics.
- 8.2 In so far as the Supplier receives drawings, specimens or other specifications from Ortlinghaus, they alone shall apply for the type, characteristics, and finish of the goods to be supplied.
- 8.3 If Ortlinghaus requests initial samples, series production may only begin after the sample has been approved in writing. Any reservations which the supplier has concerning the specifications of Ortlinghaus are to be notified to Ortlinghaus in writing without undue delay before series production starts. In such cases series production may only commence after Ortlinghaus has issued a subsequent instruction in writing to do so.
- 8.4 The goods supplied must comply with the statutory accident prevention regulations, Association of German Electricians [VDE] regulations, relevant police regulations, other statutory regulations as well as state-of-the-art-technology applicable.

**9. Warranty of quality**

- 9.1 Ortlinghaus shall be entitled to choose between a remedy or a substitute delivery. Ortlinghaus shall be entitled to withdraw from the contract, to reduce the purchase price and to claim compensation for damages as soon as the reasonable period of time set for a cure has expired and it has not been carried out.
- 9.2 Ortlinghaus is entitled to demand a reduction in purchase price and compensation for damages even if the quality defects are insignificant.
- 9.3 In the event of supplementary performance, the Supplier shall also bear the expenses incurred as a result of the purchased thing having been relocated after delivery to a place other than the consignee's place of residence or business address.
- 9.4 The claims of Ortlinghaus based upon liability for quality defects shall become time-barred two years after the contractual goods are handed over.
- 9.5 Ortlinghaus shall be entitled to full statutory claims against the Supplier under regress against the manufacturer.
- 9.6 Provided that this is expedient given the proper course of business, Ortlinghaus shall be obliged to inspect the supplied goods within a reasonable period of time for any quality defects there may be. A defect will have been notified on time if it is received by the Supplier within 10 working days from the receipt of goods by Ortlinghaus or after defects have been discovered if they are concealed defects.

**10. Withdrawal from the contract – Compensation for damages**

- 10.1 If the Supplier does not fulfil the obligations incumbent upon him as a result of the order confirmation, or if he fails to do so in compliance with the contract, after a reasonable period of time set by Ortlinghaus has expired without the obligations having been fulfilled, Ortlinghaus may withdraw from the contract and demand compensation for damages instead of performance.
- 10.2 Ortlinghaus shall be entitled to withdraw from the contract in particular in those cases in which the Supplier is in breach of his obligations in accordance with Number 2.2 and 2.3.
- 10.3 Ortlinghaus shall also be entitled to withdraw from the contract in particular if the Supplier stops making his payments or if he applies for insolvency procedures to be opened.
- 10.4 The right to serve notice of termination for an important reason shall not be affected if the contract is for the performance of a continuing obligation.

**11. Prohibition of assignment**

- 11.1 The Supplier's rights and duties under the contract cannot be transferred or assigned without the consent of Ortlinghaus.

**12. Infringement of proprietary rights**

12.1 The Supplier shall furnish a warranty that the goods supplied by him shall not be in breach of any industrial proprietary rights or other proprietary rights either in Germany or in other countries. The Supplier shall exempt Ortlinghaus in the internal relationship between the two parties from all compensation claims for damages and other claims asserted against Ortlinghaus on account of a breach of this obligation.

**13. Miscellaneous**

13.1 The place of fulfilment for consignments is stated in each case by Ortlinghaus, and in the absence of such information it is Wermelskirchen.

13.2 The place of jurisdiction for all disputes arising from, and in connection with a contract shall be Wermelskirchen. Ortlinghaus shall however, be entitled to take legal action against the Supplier at his general place of jurisdiction as well.

13.3 All claims arising from, and in connection with, the contract shall be governed by the law of the Federal Republic of Germany alone including the United Nations Convention on Contracts for the International Sale of Goods (CISG) but excluding the conflict of laws law.

13.4 Should a provision in the contract be partially or completely invalid, the validity of the remainder of the contract shall not be affected as a result. The invalid provision is then to be replaced by a provision allowed by law which comes as close as possible to achieving the aim and objective of the contract.

**We maintain a quality control system in accordance with EN ISO 9001:2000.**

**The Supplier's goods and / or services shall be used in accordance with these systems.**