

## SEUTHE GmbH Purchasing Conditions

### 1. Ordering

- 1.1. These conditions apply if nothing to the contrary has been agreed to in writing.
- 1.2. Contrary or differing conditions in offers and/or in the acceptance of the order by the contractor are only then valid if these have been accepted as being part of the order in writing by the client. All conditions, specifications, standards, and other appendices that are enclosed with the offer or mentioned in it are a component of the order.
- 1.3. All agreements must be made in writing. Oral agreements require the written confirmation of the client.

### 2. Acceptance of the order

- 2.1. After the written order has been received, the copy of the order (order confirmation) must be signed with a legally valid signature and returned within ten calendar days.

### 3. Changes to the order

- 3.1. The client is permitted to change or add to the order at any time. The contractor shall implement changes/additions in accordance with the conditions of the order. Changes/additions by the client may also cause a change of the delivery date.
- 3.2. In this case the contractor must inform the client of the reduced or increased prices within fourteen days. The contractor will ascertain new prices based on the calculation of the order. The client reserves the right to accept the new prices or not.

### 4. Scope of supply and implementation

- 4.1. Even if no indication is provided in the description contained within the order, the ordered item must, at the price agreed to and in consideration of the exclusions of performance and supply cited expressly, in itself be a complete, functional, and effective unit following installation at the site of use. This item must also, because of its safe and robust design, correspond to the operating and maintenance prerequisites to achieve the long-term performance required under practical conditions. The information contained in the order letter and its appendices including the standards and any other regulations cited there apply as guaranteed qualities.
- 4.2. All documentation required for initial operation, regular operation, and maintenance of the ordered item also forms part of the scope of performance and supply, irrespective of whether they are identified in detail in the order.
- 4.3. The order item must be implemented in accordance with the state of the art at the point in time the order was made.

### 5. Dates, deadlines

- 5.1. The contractor must keep to dates agreed to.
- 5.2. Early deliveries require the consent of the client.
- 5.3. In the case of incomplete deliveries or faulty/incorrectly manufactured parts, the client reserves the right to decide upon the point in time and location of subsequent performance / a new construction. The client will decide depending on the schedule of the entire project.
- 5.4. If the contractor does not honour subsequent deadlines set by the client or it becomes clear that they cannot be honoured, the client reserves the right to withdraw from the contract in part or in full.
- 5.5. If 5.3 or 5.4 occurs, the client reserves the right to claim the actual damage caused or being caused from the contractor.
- 5.6. The acceptance or rejection of late, deficient, incorrect deliveries/services, or deliveries/services of the wrong quantity does not entail the renunciation of contractual or statutory rights by the client. Paragraphs 377 and 378 German Commercial Code do not apply.
- 5.7. Equipment ready for dispatch which the client cannot take delivery of will be stored by the contractor for up to ten weeks. The client shall bear the costs of storage.
- 5.8. Regulations for dates apply accordingly to deadlines.

### 6. Force majeure

- 6.1. Unpredictable events and events which cannot be influenced, such as natural disasters, acts of war, and blockades, which make the punctual performance of contractual duties entirely or partially impossible, or make it considerably more difficult constitute a release from the performance of contractual duties. In all cases the contractor will do his utmost to rectify the disruptions hindering performance. If, due to such events, it is impossible for the contractor to carry out the order for a continual period of two months, the client is permitted to withdraw from the contract in full or in part. The client and contractor must inform each other immediately upon the commencement and end of such events and on request produce written confirmation from the Chamber of Industry and Commerce within seven days. If notification of force majeure is not provided in time, the client is entitled to refuse to recognise it. Parts, which are crucial in meeting the deadline, becoming scrap does not constitute force majeure.

### 7. Progress tracking, examination, inspection

- 7.1. The client and, if necessary, the customer of the client in agreement with the client or their representative are entitled, at the business premises of the contractor and any subcontractors, to convince themselves of the production progress and the quality of the documentation to be supplied as well as equipment and all materials used. For the implementation of inspection and production-shop tests, the contractor will provide at his expense assistance, human labour, materials, electricity, fuels, media, apparatus, instruments, etc. so that an effective examination can take place. If a positive inspection does not occur for which reason the contractor is at fault, all costs (e.g. personnel, travel, and material costs) shall be borne by the contractor.

**SEUTHE GmbH Purchasing Conditions****8. Dispatch processes/packaging regulations**

8.1. The dispatch process must take place in accordance with the information provided by the client alone.

**9. Contractual penalties for arrears**

9.1. If the contractor does not honour the dates and deadlines agreed to in the order, he must bear the following contractual penalties—calculated using the total order value as a basis—until the actual delivery date. The contractual penalties can also, if necessary, be deducted from the claims in the invoices of the contractor.

- Goods and services and documentation

0.5 % per week begun without payment, maximum of 2,5% of the total order value;

9.2. The contractor has an obligation to pay a penalty for late payment as soon as he falls into arrears. In the case of deficient goods/services, however, the time between their acquisition and the notice of defect provided by the client is not subject to a contractual penalty. Reservations made by the client upon acquisition of the good or service or parts thereof, however, are not required to preserve the right to a contractual penalty; the right to enforce the contractual penalty is reserved until the final payment.

9.3. The payment of contractual penalties does not release the contractor from his performance obligations and any liability resulting from these.

9.4. The contractor ensures the availability of spare, wear, and change-of-operation parts for the item supplied for ten years following the expiry of the warranty/guarantee.

**10. Late acceptance by the contractor**

10.1. If a performance test is not successful or the acceptance does not occur due to another deficiency, the client will grant the contractor an appropriate period of time for subsequent performance in accordance with the relationship of the deficiency to the entire system.

10.2. If the acceptance does not take place within a reasonable period of time for reasons for which the contractor is responsible, the client can request the contractual penalties agreed to in the order and/or a reduction in price, or withdraw from the contract whilst keeping his entitlement to make damages claims.

**11. Non-compliance with guarantees**

11.1. Even if the order provides for deficiencies or guarantees which are not honoured (e.g. penalties for inadequate performance), the contractor is not released from his obligation to ensure that his goods and services conform to their intended purpose so that the acceptance by the end buyer is not restricted or prevented.

11.2. The payment of contractual penalties, penalties for inadequate performance, etc. does not release the contractor from liability resulting from guarantees not being met.

**12. Liability limitation**

12.1. The contractor and client are not liable for lost profits and loss of production. The exclusion of consequential damages given above does not apply to claims by the end buyer against the client based on non-fulfilment, or late or deficient fulfilment of contractual or statutory obligations by the contractor.

**13. Invoicing / retention**

13.1. After the fulfilment of his contractual obligations, the contractor will, following the acceptance governed in clause 15.1, create two copies of the final invoice.

13.2. If the client has claims against the contractor arising from this order or for any other legal reasons, he is entitled to retain or offset these against the payments to be made.

**14. Assignment, offsetting**

14.1. An assignment of claims against the client is only permitted if the client has given his prior consent in writing.

**15. Acceptance, authorisations**

15.1. The acceptance of the ordered item takes place at exactly the same time as the acceptance of the entire system.

15.2. The acceptance of the item ordered does not mean the client renounces the rights he is entitled to, in particular warranty claims, damages claims arising from delays, contractual penalties, etc. Section 341, para. 3 German Civil Code is not applicable.

**16. Passing of title and risk**

16.1. The title is passed to the client with the passing of the risk. The passing of title does not result in acceptance.

16.2. The risk passes in accordance with the provisions cited in the order.

**17. Securities**

17.1. In the case of payments before supply, the contractor shall provide the client with an absolute guarantee issued by a large German bank, the content of which is to be agreed with the client. The costs for the establishment of guarantees are borne by the contractor.

**18. Warranty/guarantee period, correction of deficiencies**

18.1. The contractor guarantees, and on request of the client will prove, that the items supplied

— at the point in time of the delivery are new and unused and comply with 4.3

— possess the qualities guaranteed by the contract in compliance with 4.1

— meet the recognised technical regulations, do not have any faults or deficiencies which negate or reduce the value or

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suitability for regular use of the items or the use prescribed in the order  
— are free of third-party rights.

- 18.2. If the items ordered are not of the quality described in clause 18.1 or if deficiencies occur within the warranty period, then the contractor must remove or correct the deficiency immediately at his own expense. The remedying, deficiency correction, and/or replacement delivery must be implemented free of charge (including packaging) to the client's site of use—transport at the discretion of the orderer—and must include disassembly and re-installation.
- 18.3. The warranty period is twenty-four months after the successful initial operation of the entire system. The warranty period for replaced parts is twenty-four months following the acceptance of the installed part.
- 18.4. In the case of smaller defects (up to EUR 10,000 per individual case) or deficiencies where delay in their correction cannot be tolerated, in particular in phases where time is critical (e.g. test operation), the client is entitled to correct them, or have them corrected immediately, at the contractor's expense without consulting the contractor. This in no way affects any other rights of the client. This also applies if the contractor does not correct the deficiency on time despite being requested to do so.
- 18.5. Section 377, para. 1-4 German Commercial Code do not apply. The written enforcement of the damage or the deficiency or the written request for improvement is sufficient to preserve limitation and preclusive periods. In such cases it does not require a law suit to be filed and/or the proceedings for the preservation of evidence or the delivery of a default summons.

### **19. Property rights**

- 19.1. The contractor is liable for ensuring that use or application of the ordered item does not infringe patents or any other property rights of third parties.

### **20. Confidentiality, intellectual property, technology protection**

- 20.1. All drawings, information, systems, operative procedures, numbers, diagrams, etc. irrespective of type and origin which were passed to the contractor or became known to him in connection with the implementation of the ordered item must be handled with the utmost confidentiality and they remain the property of the client.
- 20.2. The specifications, process descriptions, and process technology provided by us are the intellectual property of SEUTHE GmbH. Their disclosure to third parties or use for economical gain or exploitation under patent law by the contractor is not permissible and obligates the payment of damages.

### **21. Suspension and termination**

- 21.1. If the contractor is responsible for the reason for termination, then the client can refuse delivery of the ordered item and request damages as well as the rescission of the contract.
- 21.2. If the contractor terminates the contract for reasons the contractor is not responsible, or without giving reasons, then he will take delivery of the work already implemented and remunerate the proportion of the contractual price which corresponds to the degree of fulfilment of the ordered item provided that the contractor proves that he has no other application for it.
- 21.3. If the client suspends the order for reasons for which the contractor is responsible, then the contractor has no right to reimbursement of the costs and expenses arising due to the suspension.
- 21.4. If the client suspends the order for reasons for which he is responsible, then the contractor will receive reimbursement for the proven costs arising due to the suspension.

### **22. Publication**

- 22.1. The contractor is not permitted to publish himself or have published any information in connection with the order or the entire project without the prior written consent of the client.

### **23. Partial effectiveness, omissions**

- 23.1. If for whatever reason one or more provisions of this order are or become unenforceable or invalid, the enforceability of validity of the remaining provisions will be unaffected thereby. In such a case the contractual partners will replace the unenforceable or invalid provisions with ones which are enforceable and are closest to the meaning and purpose of the unenforceable provisions. This must not entail the intended use or purpose of the ordered item being negated or restricted.

### **24. Place of performance**

- 24.1. The place of performance for deliveries is the place to which the ordered items must be sent in accordance with the instructions of the client. In the case of deliveries ex works, the place of the passing of risk is the place of performance. The place of performance for the delivery of documentation and for payment is the main office of the client. The place of performance for any other goods or services provided is the construction site unless otherwise agreed.

### **25. Jurisdiction, applicable law**

- 25.1. All disputes arising out of or in connection with the contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.
- 25.2. The laws of the Federal Republic of Germany and the court of record with jurisdiction for the location of the head office of the orderer apply to the contractual relationship between the contractor and the client.