

## General Terms and Conditions of Purchase of PIPE BENDING SYSTEMS GmbH & Co.KG

### I. General provisions

1. These General Terms and Conditions of Purchase apply exclusively to all contracts of PIPE BENDING SYSTEMS GmbH & Co. KG (hereinafter referred to as "PIPE BENDING SYSTEMS" or "we") on procuring goods or services. Any other terms and conditions, including, but not limited to, general terms and conditions of the supplier that are contrary to or that deviate from these Terms and Conditions shall not be applicable, regardless of whether we expressly rejected them or not, unless we expressly consented to their application in writing. Our General Terms and Conditions of Purchase shall even apply if we know about contrary or deviating terms and conditions of the supplier and still accept a delivery without reserves.
2. Our General Terms and Conditions of Purchase shall only apply to companies in the sense of section 14 paragraph 1 BGB (German Civil Code). They also apply to all future business with the supplier from an on-going business relationship.

### II. Delivery contract

1. Any quotes submitted shall include the gross prices, discount rates, other remuneration and the delivery time.
2. Our orders shall only be legally binding if they are carried out by using our forms and if they bear a legally binding signature or have been confirmed.
3. Any changes or amendments to the order and the resulting contract and all other arrangements between the parties on executing the contract shall be made in writing.
4. Any orders shall be accepted by the supplier within 14 days unless the ordered goods are delivered within three days. In this case, the order does not have to be confirmed.
5. There shall be no remuneration or reimbursement of costs for visits or the preparation of quotes, project studies or other preliminary documentation for concluding a contract unless expressly agreed on otherwise.

### III. Prices/invoicing/payment

1. The prices agreed on are fixed prices plus the legally applicable value-added tax unless agreed on otherwise in writing. The prices shall include delivery, packaging and all ancillary costs. They shall remain valid if their basis (salary and prices for material) changes. We will not accept any reservations if prices change.
2. Invoices shall be sent in duplicate to the address stated in the order. Invoices shall not be sent before the goods ordered are sent or together with the goods; in case the order concerns services, invoices shall not be sent before such services are rendered completely unless expressly agreed on otherwise in writing.
3. We can only process invoices where our order number is stated exactly. Inexact or incomplete invoices shall be deemed not received until they have been corrected or completed. We will inform the supplier of incorrect or incomplete invoices within a reasonable delay.
4. Payment shall be made – subject to all goods received without reservations
  - if we receive the goods in the first half of the month, by the 15th of said month,
  - if we receive the goods in the second half of the month, by the first of the following month,
  - in the means of payment the person placing the order chose and
  - the terms agreed between the parties/invoices that we receive on a 1st or 15th of a months can only be accounted for at the next possible delay of payment.
5. We shall have the legal rights of offset and retention.

### IV. Postage/packaging

1. If not agreed on otherwise in writing, deliveries shall be carried out to the delivery address or place of performance, carriage paid, as stated in our order. If a price was agreed as "ex works/ex warehouse", we shall only bear the cheapest freight costs available.
2. Delivery shall be at the risk of the supplier; the supplier shall be liable for an accidental damage or destruction up to the point in time of delivery or – if applicable – the acceptance at the place of delivery or performance.
3. In all delivery slips, bills of lading or other delivery documentation, invoices and other correspondence, the complete order numbers and other agreed information (such as test certificates, attestations, our position and article numbers and the date of order) shall be stated or added. The supplier shall be liable for any consequences from a culpable omission in this context.
4. The supplier shall take back packaging in the sense of section 4 Verpackungsverordnung (Packaging Act). We, however, are neither obligated to send back packaging material nor to pay for it.
5. Please note: The goods shall be packaged and sent separately for each

receiving factory, department etc. Loading goods together for different factories, departments, etc. in one delivery shall only be permitted if we consent. We will invoice the costs incurred by us internally by the supplier's non-committal to this provision with at least € 60.00 per delivery.

### V. Delivery dates/default

1. Any delivery periods and dates agreed on shall be binding. The date of receiving the goods/services at the place of delivery/performance stated by us shall be decisive for deciding whether the delivery periods have been adhered to by the supplier.
2. If the supplier learns of a situation that means that the delivery date will be impossible to meet, they shall inform us immediately and state the reasons and the estimated duration of the delay in writing.
3. The supplier shall be liable for all direct and indirect damage resulting from the default. Any acceptance of goods/services by us that are in delay shall not affect this liability. In case of a delivery delay we are entitled to demand payment of a contractual penalty amounting to 1% of the delivery value for each full week of delay, but 10% at most, from the supplier; any additional legal claims in this regard shall remain unaffected. In this case, the supplier is entitled to evidence to us that no or a materially lower damage was incurred by the delay.
4. If the delivery date is not met and this is due to reasons that the supplier is responsible for, we are entitled, after a reasonable grace period set by us has expired, to demand damages for non-fulfilment and to procure the goods/services from a third party and to withdraw from the contract. If a fixed business was agreed on, it is not necessary to set a grace period.
5. If nothing to the contrary was expressly agreed on in writing, we will not accept any deliveries before the delivery date agreed on. If a delivery comes early and this was not agreed on, PIPE BENDING SYSTEMS reserves the right to send the goods back at cost and risk of the supplier. If goods are not sent back in case of an early delivery, they shall be stored with us at cost and risk of the supplier until the delivery date agreed on arrives.
6. We will not accept any partial deliveries unless this has been expressly agreed on in writing. If partial deliveries have been agreed on in writing, the outstanding, remaining part and its delivery date shall be stated in detail in the delivery documentation.

### VI. Warranty claims

1. The supplier warrants that all goods delivered and all services rendered correspond to the state of the art, the applicable legal regulations and orders by authorities and by trade associations and fulfil the functions stipulated by us and meet our specifications. We are entitled to legal claims in full extent.
2. If the supplier has any concerns as regards the legality or feasibility of a construction or version or our specifications, they shall immediately inform us in writing.
3. If there is an obvious defect in the goods/services delivered, we shall complain in writing as soon as possible in the ordinary course of business upon discovery.
4. Any and all defects in the goods/services delivered, including, but not limited to, non-adherence to individual characteristics guaranteed or specifications agreed on, that the supplier is informed of during the period of guarantee or warranty shall be removed by the supplier immediately after having received a relevant request by us in this matter. The supplier shall not be entitled to charge any additional or ancillary costs for this and we are to choose whether we wish a repair or a replacement of the faulty parts. The above shall not affect our legal warranty claims, including, but not limited to, withdrawal from the contract, reducing the purchase price, replacement delivery and/or damages.
5. In case of epidemic failures (defects of the same kind that exist in at least 5% of the goods/services delivered) we are entitled to reject all of the goods/services delivered as faulty and assert our legal warranty claims for all of the goods/services delivered.
6. If the supplier does not fulfil their warranty obligations within a reasonable deadline fixed by us, we are entitled to have the activities necessary for removing the defects carried out by a third party or to carry them out ourselves at cost and risk of the supplier and without affecting our warranty claims against the supplier. If danger is imminent or if the matter is especially urgent, including without limitation if there is a risk of shutdown for PIPE BENDING SYSTEMS or at the production facilities of our customers, we are entitled to remove the defects immediately at cost of the supplier or to have such defects removed by a third party. In this case, we shall inform the supplier within a reasonable time. As regards our duty to avert, minimise or mitigate loss, we are entitled to repair minor defects ourselves without being obliged

to discuss prices and to invoice the costs incurred to the supplier, whose warranty obligations shall remain unaffected.

7. If nothing is agreed on to the contrary, the period of limitation for warranty claims shall be 36 months from the delivery or, if agreed as such, from acceptance. For parts that cannot continue to operate during a pending investigation of defects and/or repair activity, the applicable warranty period shall be increased by the duration of interruption. For repair or replacement parts or any parts that the supplier repaired in execution of their warranty obligation, the period of limitation shall start again at the time of repair/replacement delivery. Any exceeding statutory periods of limitation shall not be shortened by this regulation. If less than 6 months have passed since the passing of risk the parties agree that the defect has been present at the time of passing of risk.
8. Any and all best before or use by dates stated by the supplier shall be deemed guarantees of quality according to section 443 BGB.
9. The supplier shall also be liable for deficiencies in title that they are not responsible for. In this case, we are also entitled to claim damages according to section 437 BGB. The period of limitation for claims due to a deficiency in title shall be 36 months from the point in time that we learn about the situation that gives cause for our claim or – in a case of grossly negligent ignorance – the point in time that we should have learnt about it. In any case, it shall be no longer than 10 years.
10. The legal provisions (sections 478, 479 BGB) shall apply to any right of recourse we might have, but with the following amendment: We shall also be entitled to a right of recourse against the suppliers if the situation does not concern a sale of consumer goods. According to section 478 BGB, we can demand compensation for the damage incurred and the expenses made that one of our customers claims from us. In deviation of section 479 paragraph 2 BGB, our right of recourse shall not lapse earlier than after 6 months from the point in time where we fulfilled the claims asserted against us by our customer. If there are any deficiencies in title, the lapse of time shall not be deemed occurred before 10 years from the delivery of goods by the supplier to us have passed.

#### **VII. Product liability/quality/documentation**

1. If claims are asserted against us from an infringement of official security requirements or national or foreign product liability acts and regulations due to a defect in our products or services resulting from goods delivered to us or services rendered to us by the supplier, the supplier shall hold us harmless against such claims at our first request if the damage was caused by something that the supplier is responsible for or by the organisation of the supplier and the supplier is liable towards third parties. According to sections 683, 670 BGB, the supplier shall furthermore reimburse all of our costs incurred in connection with any recall campaigns. We shall inform the supplier on the type and scope of recall campaigns if this is possible to us and can reasonable be expected from us and give them the opportunity to make a statement.
2. The supplier shall constantly monitor the quality of their goods and services. They shall maintain a quality assurance programme of reasonable type and scope corresponding to DIN EN ISO 9000 et seqq. Upon request, the supplier shall present suitable evidence. If we deem it necessary, the supplier shall conclude a reasonable quality assurance agreement with us. Furthermore, the supplier shall take out and maintain a product liability insurance with a reasonable cover and provide us with a copy of the insurance policy on request.

#### **VIII. Industrial property rights**

1. The supplier warrants that any and all goods delivered and services rendered are free from any patents or other industrial property rights or copyright of a third party in the member states of the European Union or, if they know about this, from copyright of a third party in the country of destination and that no patents or other industrial property rights, copyright and licenses of a third party are infringed, including without limitation by delivery and using the goods delivered or services rendered. The supplier shall hold us and our customers harmless against any and all claims of third parties that result from an infringement of patents or other industrial property rights, copyright or licenses. Furthermore, the supplier shall be liable vis-à-vis us for any and all damage that result from such an infringement of third party rights, culpably or not.
2. If rights of a third party are infringed, we are entitled to acquire from the third party who owns the industrial property right a licence necessary for distributing, operating, using or selling or exploiting the goods/services delivered at the cost of the supplier for a reasonable price and to assert other claims against the supplier.

#### **IX. Retention of title/provision of parts or tools**

1. We retain the title in the parts or other items that we provided to the supplier. The supplier shall process, remodel or connect such items on

our behalf if necessary. If an item belonging to us is processed, remodelled or connected to another item that does not belong to us, this shall result in us acquiring co-ownership in the new item in proportion to the value of the item provided by us to the other processed, remodelled or connected items at the time of processing, remodelling or connection.

2. If an item provided by us is mixed with other items that do not belong to us inseparably, this shall result in us acquiring co-ownership in the new item in proportion to the value of the item provided by us to the other mixed items at the time of mixing. If such mixing is carried out in a way that results in the item of the supplier forming the main part of it, the parties agree that the supplier shall transfer us co-ownership in proportion. The supplier shall keep the exclusive or co-ownership on our behalf.
3. If the collateral rights that we are entitled to according to paragraph 1 and/or 2 exceed the purchase price of all of our goods in retention that have not been paid yet by more than 10%, we shall release the collaterals of our choice upon request of the supplier.
4. Any and all tools provided by us to the supplier shall remain in our possession. The supplier shall use these tools solely to manufacture the goods ordered by us. Furthermore, the supplier shall take out insurance at the supplier's cost against fire, water and theft at replacement value. The supplier shall report any incidents to us immediately; in case of culpable breach against this provision, the supplier shall be liable for any and all damage incurred by us in consequence.

#### **X. Drawings/secretcy**

1. Any and all specifications, drawings, drafts, models, samples, instructions by the manufacturer or other documents that we give to the supplier for preparing a quote or executing an order are and remain in our possession and shall not be copied or used for other ends or be disclosed to any third party without our express consent in writing. Immediately after the contract has been fulfilled, for instance by delivering the goods or by rendering the services, all documents shall be returned to us free of charge. The supplier shall not have any right of retention in such documents.
2. Any and all goods or documents that are prepared according to our specifications, drawings or models shall not be made available to any third party without our express consent in writing.
3. The supplier shall keep any business or technical information such as operating secrets of PIPE BENDING SYSTEMS as well as all of our expertise or other information that are not accessible to the public and that the supplier learns of in the course of our business relationship confidential and not disclose such information or data to any third party without our written approval. The supplier shall also bind their employees and sub-contractors with a corresponding obligation to maintain secrecy.
4. The supplier shall treat the execution and content of the contract confidential. Any references to our business relationship in advertising material, reference lists or similar documents shall be subject to our prior approval in writing.
5. The obligation to maintain secrecy stipulated in this item X. shall survive the termination of the business relationship.

#### **XI. Data protection**

We are entitled to digitally store and process all data on the supplier in connection with the business relationship in order to execute this contract in adherence with the provisions of the Bundesdatenschutzgesetz (Federal Data Protection Act).

#### **XII. Final provisions**

1. If individual provisions of this contract or these General Terms and Conditions of Purchase are or become ineffective, the effectiveness of the remaining provisions shall not be affected.
2. Without our express prior confirmation in writing, the supplier shall not assign their rights and duties from this contract to a third party.
3. If not expressly agreed on to the contrary, the place of fulfilment for the obligations of the supplier is the delivery address or place of performance stated by us. The place of performance for all other obligations is Lennestadt.
4. Any and all legal relationships in connection with the contract shall be governed by the law of the Federal Republic of Germany, in exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG). If the supplier is a merchant, the exclusive place of jurisdiction for all disputes that arise from and in connection with this contract shall be Lennestadt. However, we are entitled to sue the supplier at their domicile.

Status: January 2007