



General Terms and Conditions of Purchasing

Institut für Luft-und Kältetechnik gemeinnützige Gesellschaft mbH (ILK)

(Institute of Air Handling and Refrigeration, non-profit company of limited liability)

1. Introduction

These Terms and Conditions of Purchasing apply to all orders for performances and deliveries made by the ILK. Any other conditions do not apply, unless agreed upon in writing.

2. Offers, orders, requirement of the written form

- a) The preparation of tenders and/or compilation of quotations on the part of the client are free of charge. Also, for services (visits, planning and others) rendered by the client in advance in the context of submitting a tender, the ILK does not assume any costs and pays no remuneration, unless expressly agreed upon in individual cases.
- b) Orders, their alteration or supplementation as well as other agreements made in connection with the conclusion of a contract are binding if they have been declared and approved by the ILK in writing.

3. Prices and discounts

All prices are quoted free place of delivery, unless otherwise agreed. They compensate for all deliveries and services to be rendered by the client in meeting his duties of performance to and at the agreed place of delivery.

4. Dispatch regulations, origin of goods

- a) For each delivery, the ILK is to be provided with an exact note of dispatch/note of delivery on the dispatch day. The client is held liable for any consequences arising from the deficient issuance of consignment notes. All dispatch documentation must bear ILK's order No. and the recipient's details. Transport insurance is to be obtained by the client at his expense, unless expressly provided otherwise in writing. If the delivery contains or consists of hazardous material that is subject to specific national and international transport provisions, the client is obliged to package, label and dispatch it appropriately. If necessary, a safety specification sheet is to be attached by the client.
- b) In cases that the delivery must meet the conditions of origin of the EU Treaty on Preferential Origin, the client will provide the respective certificates of origin.
- c) The client must recover the packing material free of charge at the place of delivery.

5. Title, proprietary rights, copyrights

- a) Drawings, samples, formulas and other documentation as well as auxiliary means that the ILK makes available to the client to perform ILK's orders, remain the property of the ILK. They must only be utilised in accordance with the commissioned task and be returned upon request.
- b) Any documentation, information on supplies and other know-how entrusted to the client and with which the client becomes acquainted in the course of co-operation shall be treated by the client as confidential and must not be disclosed to third parties without the written consent of the ILK or passed on to them. The client shall also keep confidential any knowledge and results gained by his engagement; this does not apply if it becomes publicly known through no fault of his. In particular, the client must respect ILK's copyrights and its other proprietary rights. Their utilisation is only permitted in the context of the contractually agreed purposes. The client must neither commercially utilise products resulting from documentation, drawings, models and other supplies designed by the ILK or products made in accordance with the ILK's specifications nor have them utilised. He must neither offer nor surrender them to third parties.

6. Delivery dates, deadlines

- a) The receipt of the delivery and/or performance at the place of delivery or successful acceptance, if such acceptance has been agreed upon or is legally required, is effectual for the observance of dates and deadlines.
- b) As soon as the client recognises that he is unable to wholly or partly meet the agreed dates and deadlines in time, he is to immediately inform the ILK thereof, stating reasons and the anticipated duration of delay. Such information by the client will have no effect on the legal rights and claims the ILK is entitled to in the case of delay.

7. Penalty for delay

Should penalties for cases of delay have been agreed and should they have accrued, the ILK may claim them up to the settlement of the invoice on the delayed deliveries and services, without the ILK having to reserve its right upon acceptance thereof.

8. Partial, excess or short delivery

Partial deliveries or partial performance require the prior written consent of the ILK. Should the ILK, even without its prior consent, accept them, it does not justify any early maturity of payment obligations or agreement to accept additional freight costs. The ILK reserves the right to recognise excess or short deliveries in individual cases. Upon the occurrence of excess deliveries without prior written consent, the ILK is entitled to refuse receipt of the delivery, to store it at the client's expense or return it to him.

9. Bearing the risk, receipt and acceptance, force majeure

- a) The client bears the risk of accidental loss and of accidental deterioration up unto the arrival of deliveries at the place of delivery. Should acceptance have legally been provided for or agreed upon, the client will bear the risk up unto acceptance.
- b) Events of force majeure (particularly of industrial action) as well as other circumstances that are unforeseeable by the ILK or beyond ILK's control entitle the ILK to delay acceptance of deliveries and/or performances or their receipt accordingly.

- c) Normally, the ILK is only obliged to accept deliveries if they show the agreed features and characteristics.

10. Invoicing, payment

- a) Invoices must be made out in two copies after complete delivery free from defects, completion of performance or upon acceptance of successfully rendered services separately for each order, stating the order details. Invoices lacking their order No. will not be attended to and returned to the client.
- b) Unless other agreements have been made in writing, payment for properly submitted invoices is made within 14 days, at 3 % discount, or within 30 days net. The payment period starts upon the receipt of the invoice, however, not before the perfect fulfilment of the contract and/or acceptance. Payment is deemed to have been made in due time if, on the last day of the payment period, the ILK has instructed its bank to pay or, in the event of payment by cheque, such cheque has been posted.

11. Notification of defects, rights in the event of defects

- a) As far as the commercial obligation of inspection and complaint applies (acc. to § 377 HGB, German Commercial Law), ILK's obligation is limited to inspecting the goods for quantity and identity, obvious damage to the packaging or damage caused by transport as well as random checks of the goods for their essential properties. Should obvious defects be visible, the ILK immediately informs the client, within 5 workdays of delivery at the latest; other deficiencies must be reported immediately following their discovery. In cases of doubt regarding item numbers, weights and measurements, the value established by ILK's incoming goods control is decisive.
- b) The client owes perfect deliveries and performances. They must, in particular, show the agreed features and properties, be appropriate for the owed purpose of use, correspond with state-of-the-art technology and be in accordance with generally recognised technical safety regulations and rules of occupational health as established by authorities and specialised associations and meet relevant legal provisions. As far as products are subject to the Foodstuffs and Commodities Act, its relevant requirements must be met. Drawings, samples and other documentation (e.g. written documents, software, etc.) released and submitted by the ILK have no effect on the client's responsibility for properly performing the contract.
- c) In the event of defects and in the case of claims under guarantee, the ILK is entitled to its legal rights. To the extent that claims under guarantee exceed legal rights regarding defects, they will remain unaffected thereof. For claims under guarantee subject to statutes of limitation, there is a limitation period of 36 months that commences upon the delivery and/or performance or acceptance, respectively, if such acceptance had legally been provided for or agreed upon. Longer legal limitation periods for the limitation of claims from complaints and the course of the legal limitation period remain unaffected thereof.

d) Should a defect become obvious within the limitation period, the ILK, at its own discretion, is entitled to demand supplementary performance by rectification, subsequent delivery or re-manufacture within an appropriate period. In urgent cases, where the client cannot be contacted and there is the risk of incurring inappropriately severe damage, the ILK has the right to remove the defects or have the defects removed by third parties at the client's expense and risk. The ILK immediately informs the client of such actions.

e) If such supplementary performance has not been provided by the client within a specified and appropriate time, it was not successful or could not be performed within the time, the ILK is entitled, in accordance with legal regulations, to withdraw from the contract and claim compensation instead of the performance, reimbursement for ineffective expenses or a reduction.

12. Industrial property rights of third parties

The client is to ensure that the ILK does not violate copyrights, patents or other industrial property rights of third parties by his contractual use or sale of deliveries and/or performances. He is to indemnify the ILK from all claims raised against the ILK as a result of violating an industrial property rights and assumes all expenses towards maintaining such rights if these claims are based on a culpable violation of obligations on his behalf. In the event of making use this provision, the ILK will inform the client without delay.

13. Product liability, insurance

a) The client will indemnify the ILK from claims arising from product liability if they can be traced back to an error in the delivery and/or performance rendered by him. In the same circumstances, the client is held liable for damage that arises to the ILK in such cases, by providing for precautionary measures that are appropriate in kind and extent, such as public warning or recalls. ILK's right to assert a claim against the client remains unaffected thereof.

b) The client undertakes to cover relevant risks by appropriate insurance and provides proof thereof by submitting his insurance policy.

14. Data protection

For the purpose of fulfilling its contractual obligations, the ILK is entitled to store and process any data of its client, except personal data.

15. References/advertising

Without any prior written consent, the client is not entitled to use information on any intended or existing contractual co-operation for referential or marketing purposes. This also includes taking photographs of ILK's premises and operational sites and their use and/or publication in any way without ILK's express written consent.

16. Subcontracting, assignment, setting off

a) The client is entitled to subcontract third parties, or assign them, for the purpose of executing orders or substantial parts thereof only after ILK's prior written consent.

b) The client is entitled to assign his claim against the ILK to third parties, or have them collected by third parties, only with prior written consent; unless such claims have been established as legally effective or are undisputed.

c) The ILK challenges any of the client's regulations regarding reservations of title if they go beyond the simple reservation of title. They require prior agreement in writing in the individual case. Should suppliers and/or subsuppliers claim rights of ownership, co-ownership or lien or have actions of foreclosure enforced against the ILK, the ILK will hold the client liable for any damage which should occur to the ILK.

Last reviewed: October 2008