

General Terms and Conditions of Purchase of Cendres+Métaux Lux SA, Biel

§ 1 General points

1. Our terms and conditions of purchase shall apply exclusively. We only recognise conflicting or deviating conditions of the supplier if these have been confirmed in writing or are in accordance with mandatory legal provisions. This shall also apply in the event of unconditional acceptance of a delivery in the knowledge of conflicting conditions.
2. Our Terms and Conditions of Purchase shall apply to all future transactions with the supplier even if they are not expressly referred to again in the individual case.
3. Should individual provisions of these terms and conditions be invalid, this shall not affect the validity of the remaining provisions.

§ 2 Orders

1. The supplier is obliged to accept our order in writing within a period of five working days. In the case of order acceptances received later, the contract shall be deemed to have been concluded if we do not object within a period of ten working days from receipt of the order acceptance.
2. We reserve the intellectual property rights and copyrights to illustrations, drawings, calculations and other documents. They are to be used exclusively for production purposes on the basis of our order. After completion of the order, they are to be returned to us without having to be requested.

§ 3 Prices and payment

1. The net price stated in the order is binding. In the absence of any written agreement to the contrary, the price shall include the costs of dispatch as regulated in article 5 and of any certificates of origin or certificates specifying the technical condition of the goods.
2. We can only process invoices if these - in accordance with the specifications in our order - state the order number shown there as well as the order item and our article number. The supplier shall be responsible for all consequences arising from non-compliance with this obligation.
3. Unless otherwise agreed, we will pay the invoiced amount within 14 days (calculated from delivery and receipt of the invoice) with a 3% discount, or else net within 60 days after the due date and receipt of the invoice.
4. We shall be entitled to rights of set-off and retention to the extent provided by law. In the event of the delivery of defective goods, we shall also have the right to retain payment in the amount of three times the costs required to rectify the defect. If the supplier does not remedy the defect immediately after notification of the defect and if we cannot reasonably be expected to wait any longer, we may rectify the defect ourselves and call for reimbursement of the necessary expenses.

§ 4 Delivery time

1. The delivery time stated in the order is binding. Insofar as the supplier is obliged to provide, in addition to the goods, certificates concerning their origin or technical condition, these must also be provided within the agreed delivery time. The provision of such certificates forms an essential part of the supplier's fulfilment obligations. The receipt of the delivery by us or at the agreed delivery address shall be decisive for the observance of the delivery time.
2. The supplier is obliged to inform us in writing without delay if circumstances arise or become apparent to him which indicate that the delivery time cannot be met.
3. In the event of a delay in delivery, we shall be entitled to call for a contractual penalty of 0.29% of the order value for each completed calendar day of delay, not however to exceed 10% of the order value. We are obliged to declare that we reserve the right to the contractual penalty at the latest upon payment of the invoice which temporally follows the delayed delivery.
4. We expressly reserve the right to claim further damages caused by delay, against which the contractual penalty will be offset. In this context, we would like to point out that as a production and manufacturing company we are particularly dependent on punctual deliveries. Even the absence of a minor part or a necessary certificate can cause manufacturing and delivery delays of considerable extent and thus lead to damages that far exceed the order value.
5. If the delivery is made before the agreed delivery time, we are not obliged to accept it. In the event of premature acceptance, the agreed delivery date shall nonetheless remain decisive for the due date of the supplier's payment claim.

§ 5 Shipment

1. Unless otherwise agreed in writing, the delivery shall be made in accordance with ICC 'INCOTERMS 2020', DDP delivered, duty paid and additionally insured as well as including the packaging. The place of fulfilment for the performance shall be the place of receipt named by us or, in the absence of such naming, our principal place of business.
2. The supplier is obliged to state exactly our order number as well as the order item and our article number on all shipping documents and delivery notes; if he fails to do so, he shall be responsible for any delays resulting therefrom.
3. We are entitled to return the packaging material to the supplier at the supplier's expense and risk.
4. The transport and packaging risks shall be borne by the supplier.

§ 6 Condition of the delivered goods

1. Depending on the order, additional quality conditions may apply to the goods. Moreover the goods must comply with the respective applicable domestic and foreign legal conditions, the relevant ordinances and directives as well as the documents on which the order is based, such as drawings, descriptions, samples, specifications, acceptance conditions etc.
2. All goods must comply with the latest safety regulations and must have been accepted by the competent testing authorities and approved for use for the intended purpose at the time of delivery.
3. If so agreed, the delivery must also include certificates of origin or certificates specifying the technical condition of the goods.

§ 7 Warranty and indemnification rights

1. If a contractual or official acceptance inspection is planned, the supplier shall bear the acceptance costs incurred by him as a result. He must give at least two weeks' notice of the date of the acceptance inspection.

2. We are obliged to inspect the delivery for deviations from the agreed quality within a reasonable period of time. In any case, notice of recognisable defects shall be deemed to be given in due time if our notice of defects is sent to the supplier within ten days after receipt of the goods. The notification of hidden defects shall in any case be deemed to have been made in good time if our notification of defects is sent to the supplier within ten days of discovery of the defects.
3. We shall be entitled to the statutory warranty claims and indemnification claims to the full extent.
4. The warranty period shall be at least 24 months from the transfer of risk, reservation being made for longer statutory periods. Actions for warranty due to defects in the item shall become statute-barred upon expiry of two years after its delivery to us. Objections based on existing defects shall remain in force if the prescribed notification has been made to the supplier within one year after delivery.

§ 8 Product liability

1. Insofar as the supplier is responsible for product damage, he shall be obliged to release us from any claims for damages by third parties at our first request insofar as the cause lies within his sphere of control and organisation and he himself is liable in relation to third parties.
2. Within this framework, the supplier is also obliged, in accordance with his responsibility, to reimburse any expenses arising from or in connection with a recall action carried out by us.
3. We have the right to conclude settlements with third party claimants; the supplier's obligation to pay compensation remains unaffected as long as the settlements are economically necessary and appropriate.
4. The supplier undertakes to take out product liability insurance with a sum insured of at least CHF 5,000,000 per case of personal injury / damage to property as a lump sum.

§ 9 Intellectual property rights

1. The supplier hereby gives assurance that no intellectual property rights of third parties are infringed in connection with his delivery. Deliveries based on our product specifications are excluded from this.
2. If claims are made against us by a third party for this reason, the supplier shall be obliged to release us from these claims at our first written request. The supplier's obligation of release relates to all expenses necessarily incurred by us from or in connection with the claim by a third party.
3. With regard to the conclusion of settlements with third party claimants, § 8 section 3 shall apply accordingly.

§ 10 Retention of title - provision of goods

1. The supplier's retention of title is hereby excluded.
2. Insofar as we provide parts to the supplier, we shall retain title thereto. Processing or transformation by the supplier shall be carried out on our behalf. If our goods subject to retention of title are processed together with other items not belonging to us, we shall acquire co-ownership in respect of the new item in the ratio of the value of our item to the other processed items at the time of processing.
3. If the item provided by us is inseparably combined with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the item subject to retention of title to the value of the other mixed items at the time of combination. If the combination takes place in such a way that the supplier's item is to be regarded as the main item, it shall be deemed agreed that the supplier transfers co-ownership to us on a pro rata basis; the supplier shall hold the sole ownership or co-ownership in safe custody for us.
4. The supplier is obliged to insure the goods provided belonging to us at replacement value at his own expense against damage by fire or water and against theft.
5. The supplier is obliged to provide us with a list of the goods provided belonging to us as at 31 December of the previous year by the end of the first week of January of each year at the latest.

§ 11 Secrecy

1. The supplier is obliged to keep secret all specifications, formulae, recipes, calculations and other documents and information received and to use them only for the specified purpose. The information obtained shall only be made accessible by the supplier to those employees who are also obliged to maintain secrecy and only to the extent necessary for the purpose of the delivery to us. In the case of third-party processing, we must be informed in advance of the name and address of the third party for any intended disclosure. In addition, the third party shall also be obliged to maintain confidentiality. In the event that the third party breaches the obligation to maintain secrecy, the supplier hereby assigns to us all claims resulting therefrom, and we accept this assignment.
2. The obligation to maintain secrecy shall also apply beyond the time of performance of this contract, unless the supplier proves that the information in question
 - is either generally known,
 - becomes generally known through no fault of the supplier,
 - has been or will be lawfully obtained by a third party or
 - is already known to the supplier.

§ 12 Data protection

In accordance with the Federal Data Protection Act (BDSG), the supplier is hereby advised that his data will be stored by us. The data shall be processed in compliance with the Federal Data Protection Act.

§13 Place of jurisdiction - applicable law

1. The court at the registered office of Cendres+Metaux Lux SA shall have exclusive jurisdiction for all disputes. Our right to bring an action against the supplier before the court with jurisdiction at his registered office or place of residence shall remain reserved.
2. All legal relations with the supplier shall be governed exclusively by the law of the Swiss Confederation, to the exclusion, however, of the UN Convention on Contracts for the International Sale of Goods (CISG).
3. In addition, the 'INCO Terms' of the International Chamber of Commerce shall apply in the currently valid version.