

Conditions of Purchase of PINK GmbH Vakuumtechnik and PINK GmbH Thermosysteme

Draft: 05/2011

1. General provisions

- 1.1 Any contract shall exclusively be subject to our conditions of purchase. Any terms and conditions providing otherwise shall not be incorporated into such contract.
- 1.2 Changes and amendments to the contract and to this clause must be made in writing and signed. The supplier may rely on collateral agreements made prior to or on entering into a contract only if these are confirmed promptly in writing. Any statement made by one of our employees shall only be binding if confirmed by us in writing.
- 1.3 We shall be entitled to store electronically the data required for performing under the contract.

2. Shipping, delivery periods and dates, default, risk

- 2.1 Packing, shipping and insurance of the commodity shall be made in the name and at the risk of the supplier. The supplier shall provide for the return transport of used packing material, at its own expense. Each shipment shall be accompanied by a delivery note (two copies). The supplier shall send us a written dispatch note on the dispatch date.
- 2.2 Arranged dates and periods of delivery are binding and have strictly to be adhered to. The supplier can only refer to lack of resources, additives and operating supply items, and non or bad receipt by his sub-contractors in case he does not have to cover it and had informed us about the risks before end of contract. The supplier is obliged to inform us immediately as soon as he recognizes possible delays in delivery. This does not change anything on the bindingness of the agreed delivery date.
- 2.3 In case of a delay in delivery, we are authorized to bring 0,5 % contract penalty for each beginning week to bear, up to maximum 5 % of the purchase order amount. The contract penalty is also effective if we did not bring the right while acceptance of the goods and services to bear. The contract penalty does not exclude bringing a further defect to bear.
- 2.4 We will bear the owner's risk after receipt of the goods or services in our facility

3. Prices, billing

- 3.1 Supplier prices are maximum prices free our site. Prices shall include freight, custom duties, packing, insurance, expenses and value added tax. Later increases of supplier sales prices shall be excluded. Also, the supplier must not charge us for quotations or samples.
- 3.2 Supplier invoices must not accompany shipments; they shall be sent separately, in two copies. We will either pay bills within 14 days from receipt of invoice and goods free of defect with a cash discount of 3% or within 60 days net.

4. Quality, acceptance, limitation of warranty claims

- 4.1 In addition to the specifications stated in supply contract, quotation or order acknowledgment, the supplier's relevant statements and information in brochures, catalogues or other documents available to us and in advertising media shall be deemed agreed for evaluating a product's or service's quality. The agreed quality further requires that the products or services are state-of-the-art, that they are of excellent workmanship, fit for the intended use, and in compliance with product safety regulations and the statutory, official and technical provisions and regulations (Device safety act, DIN standards, EC directives, etc.) The supplier guarantees that the information given by him, as described in sentence 1 above, is correct and that the products or services meet the criteria listed in sentence 2 above.
- 4.2 The supplier shall carefully check a product's or service's quality and examine it prior to shipment or delivery to ensure product safety and environmental sustainability, under consideration of the DIN ISO 9001 standard.
- 4.3 Acceptance of or payment for products or services through us shall not be deemed an acknowledgement of their faultless condition, rather they shall be subject to examination as to quality and quantity. Pursuant to Sec. 377 HGB (German commercial code), the examination period is two weeks from receipt of the goods and the time limit for claims is one week from detection of a defect.
- 4.4 In cases of urgency, we may repair defective products or damage resulting thereof ourselves or have them repaired by third parties, at the expense of the supplier.
- 4.5 Subject to longer statutory periods of limitation, our warranty claims shall become statute-barred no sooner than 3 years from delivery to us.
- 4.6 Any limitations of liability included in the supplier's general terms and conditions shall be void.

5. Product safety, product liability, environmental sustainability

- 5.1 The supplier warrants that its products and services are safe and not hazardous, for the purpose of the product liability regulations, if used or consumed as intended or if used or consumed other than intended but such use or consumption can be foreseen, and that the products and services will not cause undue impairment of the environment. The supplier shall take all necessary organisational, personnel and technical safety measures.
- 5.2 In case that we will be held responsible for a damage by one of our customers or a third party, resulting from products or services that are unsafe or not environmentally sustainable, the supplier shall indemnify us from any damage claims inter partes, if and to the extent the supplier is responsible for such damage towards us. Our right of indemnity shall be subject to the regular statute of limitation.
- 5.3 If and to the extent the supplier is responsible for the fault triggering the liability claim, it shall also bear the costs of necessary measures taken by us to fend off damage (for example, telephone calls.)
- 5.4 The supplier shall procure sufficient insurance covering product liability and environmental liability risks in connection with the products and services supplied by it and present us proof of such insurance cover.

6. Disposal

The supplier undertakes to consider and comply with all and any requirements and regulations regarding environmental protection and waste disposal in the course of production and delivery of the contracted products. Including but not limited to, the supplier shall be responsible for the fact that the contracted products can be disposed unmixed. The supplier shall ensure this by marking the materials accordingly.

7. Spare parts

The supplier assures us to keep spare parts for our supply at fair market value for the expected life of the contracted products, at least however for a period of 5 years from the relevant delivery dates.

8. Industrial property rights, secrecy, forms and tools

- 8.1 The supplier shall be liable for ensuring that the use or sale of the contracted products or services is allowed without infringing third party rights. It shall indemnify us from and against any third party claim based on infringement of such third party rights.
- 8.2 We reserve title and all industrial property rights and copyrights to all constructions, designs, forms, tools, samples, images and other documentation supplied by us. The supplier may use such constructions etc. only for the purpose for which it was intended by us and must return them to us when it does not need them any longer for us.
- 8.3 The supplier shall keep all and any business secrets and especially know-how and expertise gained in the business relationship with our company secret from third parties.
- 8.4 Title to tools, forms or other devices or equipment that the supplier has produced or procured at our expense, in full or in part, shall be transferred to us automatically. The supplier shall carefully keep the objects for us, free of charge, until the end of the supply relationship instead of physically delivering them to us.

9. Place of performance, place of jurisdiction, choice of law

Place of performance shall be our registered place of business in Wertheim. Place of jurisdiction, in our own discretion, shall be Wertheim/Mosbach or the competent court for the supplier's registered place of business. The German law applies, excluding the UN law on sales (CISG).

PINK GmbH Vakuumtechnik
PINK GmbH Thermosysteme