

General Terms and Conditions of Purchasing and Ordering

These General Terms and Conditions shall apply to all contractual relationships between vendors, public law legal entities and public law special funds (hereinafter referred to as "the Supplier") and Druschke GmbH (hereinafter referred to as "the Ordering Party")

1. **Specific provisions**
- 1.1 The legal relationship between the Supplier and the Ordering Party shall be subject exclusively to the following general terms and conditions of purchase.
- 1.2 Any provisions to the contrary are hereby expressly excluded.
- 1.3 The unconditional acceptance of goods or services (hereinafter referred to as "Goods" or "Delivery Item") or payment without reservation by the Ordering Party shall in no way constitute recognition of the general terms and conditions of business of the Supplier.
- 1.4 These terms and conditions of purchase shall also apply to all future transactions with the Supplier.
2. **Orders**
- 2.1 All supply agreements (orders and acceptance) and delivery requests must be made in writing. Orders and delivery requests may also be submitted in data form (fax, email), subject to prior written agreement.
- 2.2 All verbal arrangements made after the conclusion of the agreement, in particular subsequent amendments and supplements to our terms and conditions of purchase, as well as collateral agreements must be confirmed in writing by the Ordering Party.
- 2.3 Cost estimates shall be binding and free of charge, unless expressly agreed otherwise.
- 2.4 The Ordering Party may request reasonable modifications to the Delivery Item in terms of design and manufacture. Any consequential increase or reduction in cost or any impact on delivery dates shall be settled by means of a mutual and appropriate agreement.
- 2.5 Should the Supplier not accept the order within two weeks of the order date, the Ordering Party shall be entitled to cancel the order. Should the Supplier not contest a delivery request within two weeks of receipt thereof, such request shall become binding on the expiry of this period, at the latest.
3. **Prices, payment, insurance**
- 3.1 Unless agreed otherwise, the prices shall be "ex works" duty paid (DDP pursuant to Incoterms 2010), including packaging. Prices shall exclude VAT.
- 3.2 Unless agreed otherwise, the Ordering Party shall make payment either within 30 days against a 3% discount or within 30 days without discount as of the due date of the payment, stating the date and receipt of the invoice and the Goods or the performance of the services. Payment shall be made subject to checking the invoice.
- 3.3 In the event of early delivery, payment shall be due on the agreed payment date, or in the case of doubt, after the agreed delivery date at the earliest.
- 3.4 The transport insurance for the delivery shall be arranged by the Ordering Party. Any commission paid by the Supplier shall not be reimbursed. The Ordering Party shall not, as a client exempted from forwarding insurance within the meaning of §39 of the General German Forwarders' Conditions, assume any fees for forwarder's risk insurance/goods delivery and collection insurance (SVS/RVS).
4. **Delivery and periods, delivery delays, contractual penalties**
- 4.1 Agreed dates and periods shall be binding. Whether or not a delivery date or delivery period has been complied with shall be determined by the time at which the Goods are received at the intended place of use/designated delivery location as given by the Ordering Party. When dealing with vendors, the designated delivery location shall be the plant of the Ordering Party given in the order, unless another plant has been expressly stipulated. Should delivery "ex works" duty paid (DDP pursuant to Incoterms 2010) not have been agreed, the Supplier shall ensure that the Goods are available for collection on time, allowing for standard times for loading and dispatch. Furthermore, the Supplier agrees to liaise directly with the carrier of the Ordering Party.
- 4.2 Partial or early deliveries shall not be permitted, unless the Ordering Party has expressly agreed to this.
- 4.3 The unconditional acceptance of a late delivery or service shall not constitute a waiver of the Ordering Party's right to claims for compensation for late delivery or delays in service; this provision shall apply until the Ordering Party has made full payment in respect of the delivery or service in question.
- 4.4 The statutory provisions shall apply should the agreed dates not be met. Should the Supplier become aware of difficulties which may prevent it from complying with the agreed delivery times or from delivering the agreed quality levels, the Supplier must immediately inform the Ordering Party of this, stating the reasons for the situation. Furthermore, the Ordering Party shall be entitled to levy a contractual penalty of 0.5%, with a maximum of 5%, of the total value of the order for each delayed week or a part thereof. This amount shall be offset against any claim for damages arising from the delivery date being exceeded.
- 4.5 Should the Supplier be responsible for installing or assembling the Goods, it shall bear any necessary additional costs, unless agreed otherwise.
- 4.6 The Supplier shall bear the risk up to receipt of the Goods by the Ordering Party or its authorised representative at the contractual delivery location.
- 4.7 The Supplier guarantees that a thorough inspection of the Goods will be carried out prior to dispatch to ensure that all orders will be free of any defects. Acceptance of the Goods shall be subject to their inspection for any defects, in particular with regard to correctness, completeness and suitability. The Ordering Party shall be entitled to inspect the Delivery Item in so far as and as soon as this is possible under normal business conditions. The Ordering Party shall immediately inform the Supplier should any defects be discovered. The Supplier hereby waives the right to contest the late notification of defects.
- 4.8 In the absence of evidence to the contrary, the quantities, weights and measures determined by the Ordering Party during the incoming goods inspection shall be decisive.
- 4.9 The Ordering Party shall be entitled to use any software, including the relevant documentation, supplied as part of the overall order in terms of its agreed performance features, in accordance with the use of the product as laid down in the agreement. A backup copy may also be made without the need to obtain express permission for this.
- 4.10 If required, the Supplier shall set up a consignment warehouse at the request of the Ordering Party. In such a case, the parties to the agreement shall conclude a separate agreement in this regard.
5. **Confidentiality**
- 5.1 All information made available by the Ordering Party (including aspects which can be derived from the objects, documents or software handed over, as well as any other knowledge or experience) which is not and which cannot be shown to be in the public domain, must be treated confidentially vis-à-vis third parties. Such information shall remain the exclusive property of the Ordering Party and shall be made available only to those people in the Supplier's organisation who are involved in the deliveries for the Ordering Party and on whom the duty of confidentiality has also been imposed. Confidential information may not be copied or used for any commercial purpose – other than in respect of the deliveries to the Ordering Party itself – without the prior written consent of the Ordering Party. At the request of the Ordering Party, all information (including copies and illustrations) originating from the Ordering Party and any objects loaned by it to the Supplier must immediately be returned in full to the Ordering Party or be destroyed; the Supplier must submit a corresponding written declaration that this has been done.
- 5.2 The Ordering Party reserves all rights in respect of such information (including copyright and the right to register industrial property rights). Where the Ordering Party obtains such information from third parties, this reservation shall apply in favour of such third parties as well.
- 5.3 Products manufactured according to documents drawn up by the Ordering Party, for example drawings, models and suchlike, or according to its confidential information or with the aid of its tools or reproduced tools may not be used by the Supplier itself nor be offered or supplied to third parties. The same shall apply to printing orders.
- 5.4 The Supplier shall impose the same obligations on its subcontractors.
6. **Inventions, industrial property rights**
- 6.1 The Supplier hereby grants Gerlikon Leybold Vacuum GmbH, now for henceforth, a free-of-charge, fully assignable and temporarily unrestricted right of use in respect of patentable inventions arising within the framework of the legal relationship between the Supplier and the Ordering Party, in particular in respect of development performances. The Supplier shall ensure that it is able, from an organisational point of view, to fulfil its obligation in respect of utilisation and transfer.
- 6.2 The Supplier is aware that the products of the Ordering Party are used worldwide. It guarantees that it informed the Ordering Party, before the contract was awarded, about published, unpublished, proprietary and licensed industrial property rights and applications for the registration of industrial property rights in respect of the Delivery Items.
- 6.3 Should the Ordering Party be held liable on account of the violation of an industrial property right referred to in sub-clauses 1 or 2, the Supplier shall become involved in the dispute and shall assume all costs in this regard.
- 6.4 In the event of the violation of foreign rights, the Ordering Party shall be entitled vis-à-vis the Supplier, irrespective of whether the Supplier is to blame, to compensation of the loss suffered. The Ordering Party shall be entitled to arrange for authorisation for use to be obtained from the entitled party at the expense of the Supplier.
7. **Packaging, delivery notes, invoicing, country of origin, AEO standards**
- 7.1 The packaging shall, in so far as it is not made available on loan, be charged at the verifiable prices of the Supplier and shall be shown separately in the offer and invoice. At the request of the Ordering Party, the Supplier shall remove the packaging at its cost, in so far as another arrangement has not been made in an individual case.
- 7.2 The Ordering Party must be furnished with a delivery note and a separate invoice for each shipment. Duplicates must be designated as such. The invoice must give the Supplier's reference number, the date and number of the order or the delivery request, the payment due date, the quantity and material reference, the number and date of the delivery note, separately itemised gross and net weights, additional information from the Ordering Party (e.g. unit of measurement) as well as the agreed price/unit quantities. The invoice must give the registered VAT-Number if the Supplier is based within the EU. Invoices are to be sent to the Ordering Party electronically to the email address rechnungsstelle@druschke.eu or in double issue by postal service. The duplicate is to be marked as such. Each delivery shall be accompanied by a packing list, detailing the exact contents and the corresponding order number.
- 7.3 Should the invoice relate to multiple orders, the details given in point 7.2 must be listed separately for each order. The invoice shall refer solely to the delivery note. All form of documentation must be in the English form only for a non-German speaking Supplier.
- 7.4 A Supplier based in the EU must notify the Ordering Party of the country of origin of the Goods by means of a long-term supplier declaration while a Supplier not based in the EU must do so by means of an acknowledgement of proof of preference or certificate of origin. The Supplier must inform the Ordering Party immediately of any change to the country of origin, without being asked to do so. The Supplier shall indemnify the Ordering Party against all costs arising from inappropriate, incomplete or inaccurate declarations or documents of origin.
- 7.5 The supplier declares to be an Authorized Economic Operator (AEO) respectively to have implemented at least seven processes in his organization to accomplish the standards of article 14 of the EU instruction 1875/2006.
8. **Force majeure**
- 8.1 Force majeure, industrial disputes, business disruptions arising through no fault of the parties, unrest, government measures or other unavoidable events shall entitle the Ordering Party to rescind the agreement in whole or in part – without prejudice to its other rights – in so far as such events result in a considerable reduction in the Ordering Party's requirements and are not negligible in duration.
9. **Warranty, liability**
- 9.1 Unless stipulated otherwise below, the statutory provisions in respect of defects of quality and legal imperfections in title shall apply. The warranty shall also apply to the deliveries and services of the subcontractors of the Supplier.
- 9.2 Any defect of quality arising within 6 months of the date of the passing of the risk shall be assumed to have already existed at the time of the passing of the risk, unless this assumption is inconsistent with the nature of the product or the defect.
- 9.3 The Ordering Party shall be entitled to choose the form of the subsequent performance. The Supplier may refuse the aforesaid form of subsequent performance under the preconditions stipulated in § 439 (3) German Civil Code.
- 9.4 Should the Supplier fail to commence with the remedying of the defect immediately after having been asked to do so, the Ordering Party may in urgent cases, in particular in order to avoid pressing dangers or more serious damage, remedy the defect itself or arrange for the defect to be remedied at the expense of the Supplier.
- 9.5 The warranty period shall end 24 months after the product has definitively been put into operation by the end client, but shall in any event expire 36 months after delivery to the Ordering Party.
- 9.6 In the event of legal imperfections in title, the Supplier shall indemnify the Ordering Party as well as its clients against claims of third parties. Legal imperfections in title shall be subject to a period of limitation of 10 years.
- 9.7 Should repairs be carried out to parts of the delivery during the period of limitation, the period of limitation shall be suspended until the Supplier has fulfilled any claims in respect of subsequent performance in full.
- 9.8 Any costs incurred by the Supplier in the case of liability contingent upon fault, this shall only apply if the Supplier is at fault. In so far as the loss or damage is attributable to the Supplier, the burden of proof shall in this regard be incumbent upon the Supplier. In such a case, the Supplier shall bear all costs and expenses, including the costs of possible prosecution or possible recalls.
- 9.9 Should the Ordering Party have to take back any product manufactured and/or sold by it as a result of defects in the products provided by the Supplier or should the Ordering Party consequently have to reduce the purchase price or should any other claim be made against it, it reserves the right to seek recourse from the Supplier. This shall not require the setting of a time limit as is otherwise necessary in the event of claims based on defects.
10. **Other liability**
- 10.1 Should any claims be made against the Ordering Party on account of product liability, the Ordering Party shall be indemnified by the Supplier if and in so far as the loss or damage is caused by a defect in the Goods delivered by the Supplier. In the case of liability contingent upon fault, this shall only apply if the Supplier is at fault. In so far as the loss or damage is attributable to the Supplier, the burden of proof shall in this regard be incumbent upon the Supplier. In such a case, the Supplier shall bear all costs and expenses, including the costs of possible prosecution or possible recalls.
- 10.2 The Supplier undertakes to take out factory insurance and product liability insurance from a recognised EU insurer, covering loss resulting from defects in the products and recall costs. The insured amount shall cover personal injury, pecuniary loss, loss resulting from defects in the products and recall costs up to EUR 2 million in each case per damaging event.
11. **Assignment of claims**
- 11.1 The Supplier shall not be entitled to assign its claims vis-à-vis the Ordering Party or arrange for third parties to collect such claims without the prior written consent of the Ordering Party, which consent shall not be unreasonably withheld.
- 11.2 In the event of counter-claims, the Ordering Party shall be entitled to withhold payment or issue a notice of setoff.
12. **Ownership**
- 12.1 Retention of title on the part of the Supplier shall require an explicit separate agreement in order to be valid.
- 12.2 Any documents submitted to the Supplier or drawn up by it on the instructions or with the consent of the Ordering Party shall remain or become the property of the Ordering Party.
- 12.3 The Supplier must store orders separately and must label them as being the property of the Ordering Party. This also applies where order-specific materials have been handed over. Component parts and materials shall be processed and treated on behalf of the Ordering Party. Any Goods manufactured on the basis of advance payments or component parts shall be the property of the Ordering Party or title thereto shall pass to the Ordering Party. Should the Supplier acquire (co-)ownership as a result of amalgamation or blending, the Supplier shall, at the time when the ownership arises, transfer a co-ownership share equivalent to the value of the component parts or materials to the Ordering Party. The transfer of possession shall in this regard be replaced by the storage of these objects by the Supplier, free of charge. The Ordering Party shall at all times be entitled to check whether the goods are being stored and have been labelled properly.
- 12.4 Any tools, equipment and models manufactured by the Supplier subject to an agreement and charged separately by the Supplier shall become the property of the Ordering Party. The Supplier must ensure that they are labelled as being the property of the Ordering Party, that they are securely stored, protected against damage of any kind and are used only for the Ordering Party's purposes. The Ordering Party must be informed in good time and in writing of any natural wear and tear. If requested, the Supplier shall be obliged to hand over objects in a proper condition. Should any equipment hire contract be concluded, such contract shall apply as a supplement.
13. **Quality and documentation**
- 13.1 The deliveries of the Supplier shall conform to the current state of technology, safety regulations and the agreed technical specifications. An appropriate quality management procedure must be set up and demonstrated.
- 13.2 The quality management records of the Supplier must show when, how and by whom a product was guaranteed to be free of defects. These records must be kept for a period of 15 years and shall be made available to the Ordering Party on request. The Supplier shall be entitled to reduce this period if it is able to demonstrate that the products do not pose any danger to life or health when used. The Supplier shall be obliged to impose the same obligations on its subcontractors in so far as this is possible in legal terms.
14. **Safety and environmental protection**
- 14.1 Packaging shall be designed in such a way as to be easily separated and recycled, avoiding composite materials and using naturally grown materials. Details of the products and materials used must be provided.
- 14.2 Persons carrying out work on the premises of the Ordering Party in execution of the agreement shall adhere to the respective company rules. Any liability for accidents on the Ordering Party's premises in which such persons are involved shall be excluded, unless such accidents are caused by willful or gross negligence on the part of the legal representatives or vicarious agents of the Ordering Party.
- 14.3 Should there be reason to assume that a delivery or service does not meet the applicable safety requirements of that a delivery or service poses a significant danger even when used in accordance with the instructions, the Ordering Party shall be entitled to demand that individual proof be submitted that the provisions of equipment safety legislation are being observed. Should the Supplier be unable to provide such proof or be unable to provide the proof within a reasonable period of time, the Ordering Party shall be entitled to withdraw from the agreement.
15. **Final provisions**
- 15.1 The exclusive place of jurisdiction for all disputes arising either directly or indirectly from any contractual relationship based on these terms and conditions of purchase shall be Gelnhausen. The Ordering Party shall furthermore be entitled to bring an action against the Supplier before the court in the district where it has its registered office or a branch establishment or at the place of performance, at the choice of the Ordering Party. The contractual relationship shall be subject to German law, to the exclusion of the conflict of laws provisions and the UN Convention on Contracts for the International Sale of Goods (CISG).
- 15.2 Should one of the parties to the agreement suspend payment or should a petition for bankruptcy proceedings in respect of its assets or an application for judicial or extrajudicial composition proceedings be submitted, the other party shall be entitled to withdraw from that part of the agreement that has not yet been executed.
- 15.3 Should one of the provisions of these terms and conditions of purchase or any additional agreements concluded be or become invalid, this shall not affect the remaining provisions of these terms and conditions of purchase. The parties shall be obliged to replace such a provision with a provision which comes as close as possible to the economic aim of the invalid provision.
- 15.4 Note: In accordance with the Federal Data Protection Act, it must be pointed out that the Ordering Party has saved the Supplier's data and that this data will be processed

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