

General Purchasing Conditions of Monier Roofing Components GmbH

§ 1 Scope of application

1. These General Purchasing Conditions ("GPC") apply for the all commercial transactions with our suppliers and contractors ("Supplier") in the sector purchases and deliveries of items, without consideration whether the Supplier produces them himself or purchases them from other suppliers.
2. Our GPC apply - unless otherwise determined - only if the Supplier is an entrepreneur (§ 14 BGB (German Civil Code)), a legal person under public law or a special fund under public law.
3. Our Purchasing Conditions also apply for all future transactions with the Supplier without explicit mentioning.
4. The written form required in accordance with these GPC is also preserved with the transmission via remote copy (fax) or email. Individual agreements with the Supplier concluded in isolated cases take precedent over the conditions of these GPC. Our written confirmation or a written contract is decisive for the content of such agreements.
5. These GPC apply exclusively. Deviating, opposing or supplemental purchasing conditions of the Supplier are not an integral component of the agreement unless we have explicitly consented to their application in writing. This requirement for consent applies in any case, thus also if we accept the delivery without reservation with knowledge of the Supplier's purchasing conditions.
6. According to these GPC, working days are the calendar weekdays Monday through Friday, unless they are public holidays.

§ 2 Formation of contract, specifications

1. Offers as well as any quotes have to be submitted in writing and are free of charge for us. Only orders issued in writing are legally binding.
2. Basis of the order by us are the respectively agreed specifications of the goods. Particularly our approvals of prior supplied samples, templates, descriptions or other examples of goods as well as those specifications and product descriptions, which - e.g. by designation or reference in our order - are subject of the contract or otherwise effectively incorporated in the contract, apply as agreements regarding the quality. Among other, quality features are function, operating speed and precision of supplied goods. If the sample, the template or other examples of goods are deviating positively from previous specifications according to our view and if we approve them in writing to the Supplier, this is deemed an agreement regarding the quality.
3. The Supplier is obligated to accept or execute our order (offer) without reservation by issuing a written confirmation within a term of 3 working days (acceptance). A delayed acceptance is deemed to be a new offer and requires our acceptance.
4. The Supplier is obligated to possess a documented Quality Management (DIN EN ISO 9001) and to execute same in connection with our orders at all times. The Supplier shall grant us access to his business premises for the purpose of quality audits to a necessary extent and upon prior arrangement.
5. The object of delivery also includes installation and operating instructions, service manuals, spare parts catalogue, test protocols and reports as well as verifications regarding Certificates of Analysis (CoA) if relevant for the respective product. Upon written request, the Supplier shall furthermore deliver to us other registration documents and/or certification documents for the ordered goods. We are furthermore entitled to randomly check outgoing goods prior to their dispatch to us following prior coordination.
6. The Supplier is obligated to inform us regarding required permits and duties to report regarding the import and the operation of the goods as well as further delivery items. Respective documentation (e.g. customs documents) has to be delivered to us together with the delivery of the goods.
7. Machines are to be offered in their latest version and have to comply with the latest findings and the applicable state of the art in the engineering sector and must be designed utilising standard machine components according to the respectively applicable DIN/EN. Machine elements and parts have to be designed and arranged in a manner allowing fast and efficient service, inspection and exchange, particularly without having to first detach other machine elements.
8. All delivered goods have to comply with the statutory provisions and must be safe without limitations. At the time of transfer of risk they have to be approved by the respectively responsible inspection authorities for the intended designated purpose as well as possess any protective devices demanded by authorities. The Supplier shall comply with all safety regulations, particularly the protection provisions of the Product Safety Act, fire protection and the protection of the environment as well as the regulations of the Institutes for Industrial Safety, e.g. the accident prevention regulations.

§ 3 Delivery, Default in Delivery, Contractual Penalty

1. Delivery terms and deadlines are binding for the Supplier. If the delivery time has not been stipulated in the order or otherwise agreed, it amounts to 10 working days following the conclusion of the contract. Our receipt of the goods is decisive for the compliance with delivery deadlines and/or dates. If the Supplier does not provide his services within the agreed delivery period or if he is in default, we are entitled to the statutory claims, particularly withdrawal from the agreement and compensation. The regulation of § 3 No. 6 remains unaffected here from.
2. The Supplier is obligated to immediately inform us in writing if circumstances occur or become evident to him which indicate that the agreed delivery deadlines and times cannot be complied with; he is also obligated to notify us in writing regarding the expected duration of the delay.
3. The unconditional acceptance of a belated delivery or service does not constitute a waiver of claims due to us based on the delay.
4. The Supplier is only entitled to partial deliveries following our prior written consent.
5. The Supplier shall notify us in writing regarding any occurring supply bottlenecks in the event of force majeure without undue delay, stating the expected period of delay. Supply bottlenecks in this context refer to the inability to deliver ordered goods for a period of more than five working days. Force majeure and industrial disputes exempt the Supplier and us from the obligations to perform for the duration of the disturbance. The contractual partners are, within reason, mutually obligated to immediately notify the respective other party regarding the respective implications and adapt their obligations to the changed conditions. We are totally or partially exempt from the obligation to accept and/or approve the delivery and entitled to withdraw from the agreement if the delivery is no longer utilisable for us due to the delays, considering economic aspects. In case of transgressions of the period of execution due to force majeure we may demand delivery / service from the Supplier at a later point in time at the originally agreed conditions or, following the expiration of a reasonable period of grace, completely or partially withdraw from and/or terminate the contract.
6. The Supplier is only entitled to invoke the lack of necessary documentation, data, provisions etc. to be supplied by us if the Supplier has demanded those in writing and has not received them within a reasonable period.
7. If the Supplier is in default, we are entitled to demand a contractual penalty in the amount of 0.25% of the agreed net price per working day. However, the total of the contractual penalty shall amount to maximally 5% of the agreed net price. We are entitled to demand the contractual penalty as well as the fulfilment and, as the minimum amount, compensation owed by the Supplier according to the statutory regulations. The assertion of further damages remains unaffected. The Supplier is entitled to proof that we incurred no damage at all or a significantly lesser damage.
8. In case of deliveries arriving earlier than agreed upon, we reserve the right to decline acceptance and return the goods at the expense of the Supplier. If the goods are not returned in case of premature delivery, the goods are stored at our premises at the expense and risk of the Supplier until the delivery date. A premature delivery does not affect the agreed due date for payment.

§ 4 Duty to verify and provide information

1. The Supplier is obligated to obtain information from us regarding the intended application of the goods to be delivered by him and hereby also consider seasonal and other deviations regarding the conditions for application and utilisation. He has to inform himself regarding the regular running times and service options of the machines. As his independent obligation the Supplier assumes our consultation in the selection and specification of the goods to be supplied, in particular also the obligation to advise us in writing regarding concerns pertaining to the suitability of goods selected by us and/or our specifications for their intended purpose. In the context of the business relationship and based on our placed order, the Supplier shall furthermore immediately and comprehensively inform us in writing regarding new technical developments and new regulations.
2. The Supplier notifies us immediately if he has concerns regarding the type and manner of the execution of the delivery / service requested by us or if he envisages any hindrances through us or third parties in the execution of his deliveries / services.
3. The Supplier of raw, auxiliary and indirect materials ("RAI") shall inform us with regard to our possible future deliveries as early as possible prior to the change of supply sources, recipes or production methods to allow us to procure sufficient supplies of "old" or otherwise proven RAI in order to continue our operation in the event of the unsuitability of the "new" RAI up to the establishment of alternate sources. This applies accordingly for the Supplier's obligation from § 8 regarding the supply of spare parts. Existing orders by us are not affected by this item.
4. According to above No. 3 the Supplier shall - also beyond RAI supplies - notify us regarding a change of his place of production as well as changes to the production process and machine parameters.

§ 5 Transport, Transfer of Risk, Third Parties

1. Delivery has to occur "DDP" in accordance with Incoterms 2010 to the Federal Republic of Germany and include packaging, unless otherwise agreed in writing. Each delivery has to be indicated to us and the recipient determined by us on the date of dispatch.
2. The delivery has to be accompanied by a delivery note stating date, content of the delivery as well as our order code. If the delivery note is missing or incomplete, we are not responsible for any resulting delays in processing as well as payment.
3. The Supplier is obligated to package the goods in a manner preventing transport damages. The Supplier is obligated to collect packaging material upon our request at his expense.
4. The risk of accidental destruction and accidental deterioration of the goods is transferred to us upon handover at the place of fulfilment or upon acceptance if it has been agreed.
5. Without our prior written consent the Supplier is not entitled to have the performance owed by him provided by third parties (e.g. subcontractor).
6. Within reason, we are entitled to demand in writing from the Supplier changes to our ordered delivery in the amount, type and execution of the delivery. The Supplier has to implement the changes within an appropriate period of time. Amicably appropriate regulations have to be agreed upon regarding the implications, particularly regarding the delivery deadline as well as additional or reduced costs.

§ 6 Prices, Default of Payment, Off-setting, Retention, Assignment

1. The price stipulated in the order is deemed a fixed price including the respective statutory VAT, unless the Supplier reduces his prices. In the latter case the Supplier shall inform us about the reduced prices without undue delay and offer us these prices for the respective order.
2. The price comprises all services and ancillary services of the Supplier (e.g. assembly, installation) as well as all further costs (e.g. proper packaging, transport costs including any transport and liability insurances, postage, customs).
3. The agreed price is due and payable within 30 calendar days following the complete delivery and performance and receipt of a proper invoice, which particularly contains our order code. If we make payment within 14 calendar days from delivery, the Supplier shall grant us 3% discount on the gross invoice amount.
4. We are not liable for maturity interest. The default interest amounts to 5 percentage points above the base interest rate. The statutory regulations apply in the event of default, whereby the Supplier's reminder has to occur in writing in any event.
5. We are entitled to offsetting and retention rights as well as plea of the unfulfilled contract within the limits of the law. The Supplier is only entitled to offsetting and retention rights against us in case of conclusively determined or uncontested claims.
6. Payments to the Supplier do not constitute acceptance or approval regarding the Supplier's contractual performance.
7. Without our prior written consent the Supplier is not entitled to assign claims against us to third parties.

§ 7 Warranty

1. Unless otherwise determined below, the statutory regulations apply for our rights in case of material defects and defects of title of the supplied goods, including wrong and short delivery, improper installation, defective installation or operating instructions as well as other breaches of duty by the Supplier.
2. The Supplier is particularly liable in accordance with the statutory regulations for the supplied goods being suitable for the contractually intended utilisation, comply with the respectively latest state of science and technology as well as with the official and legal regulations. The Supplier is furthermore liable that the supplied goods possess the guaranteed or agreed quality, particularly that they comply with the agreed specifications.
3. In the context of the statutory requirements to inspect and make a complaint in respect of a defect according to §§ 377, 381 HGB (German Commercial Code), the following applies: Our duty of inspection is limited to defects discernible by our incoming goods inspection through external inspection as well as random quality control. If acceptance is agreed, a duty of inspection does not exist. Our requirements to make a complaint for defects detected later remain unaffected. Our notice of defect is deemed immediate and in due time if it has been received by the Supplier within five working days.
4. All costs for verification or subsequent improvement (including any de-installation and installation costs, costs for the transport of rejected goods) are borne by the Supplier. The above also applies if it should become evident that a defect did not exist. Our liability for compensation in case of unjustified demands of remedy remains unaffected here from; our liability is hereby limited to those cases whereby we recognised or gross negligently failed to recognise that no defect existed.

5. If the Supplier does not comply with his obligation of subsequent fulfilment, at our discretion by way of elimination of the defect or by the supply of defect-free goods (including the retrieval of the defect goods) within an appropriate period determined by us or if he has finally and unjustly refused subsequent improvement, we are entitled to remedy the defect ourselves and/or have it remedied by third parties on our behalf without further ado and demand compensation and/or an appropriate advance payment from the Supplier for the expenditures required for this matter.
6. If subsequent fulfilment by the Supplier has failed or is unacceptable for us, e.g. for reasons of threat to the operational safety, the impending occurrence of disproportionate damages or any other special urgency, a period of grace is not required. We shall inform the Supplier of such circumstances as well as the type and extent of the required and/or initiated urgent measures without undue delay, if possible. In special cases we are entitled to demand from the Supplier to immediately initiate interim measures unless the expenditures for these measures are grossly disproportionate to our interest in an interim improvement. The obligation of final defect remedy remains unaffected here from.
7. Our rights according to the statutory regulations, particularly the reduction of the purchase price or the withdrawal from the agreement as well as compensation for damages and expenditures remain unaffected from the stipulations above.

§ 8 Spare parts, Customer service

The Supplier of machines is obligated for a period of double the usage period applicable for the machines according to the applicable AfA Table of the German Taxation Administration

a) to supply us with all spare parts;

b) to maintain a customer service which can be contacted on working days between 7:30 h and 19:00 h and arrives at our location within 48 hours.

§ 9 Statute of limitation

1. The reciprocal claims of the contractual parties become statute barred according to the statutory regulations unless otherwise determined below.
2. By derogation from § 438 (1) No. 3 BGB (German Civil Code) the general period of limitation for claims based on material defects and defect of title is 3 years. The statutory period of limitation for in rem restitution claims of third parties according to § 438 (1) No. 1 BGB (German Civil Code) remains unaffected; claims based on legal defect do not become statute barred in any event as long as the third party can still assert the right - particularly due to lack of limitation - against us. Furthermore, the limitation period in case of raw materials, which are processed by us to end products which are utilised for a building in accordance with their usual application, amounts to six years.
3. In deviation of § 438 (1) No. 2 BGB (German Civil Code) the general limitation period for material and legal defects in case of buildings and items which were utilised for a building in accordance with their usual application and which have caused its defect amounts to six years.
4. If acceptance has been agreed upon, the statute of limitation commences with the acceptance. If acceptance or delivery did not occur, the statute of limitation commences upon the origin of the claim.
5. The statute of limitations of purchase law and the above No. 2 and 3 only apply as minimum periods for our extra-contractual compensation claims related to a defect of the goods; for the remainder the regular statutory limitation applies (§§ 195, 199 BGB (German Civil Code)). The same applies if a sold right does not exist or the Supplier has accepted a warranty or maliciously concealed a defect.
6. The statute of limitation of the warranty claims is also interrupted if the Supplier verifies the existence of a defect himself. The interruption of the statute of limitation is only concluded when the Supplier has informed us in writing that the negotiation is concluded or that the result of the verification is sent to us or when the Supplier refuses the continuation of the remedy of defect in writing. The resumption of the negotiation, verification or remedy of defect once again leads to the interruption of the statute of limitation.

§ 10 Proprietary rights, Software

1. Unless agreed to by individual contract the Supplier at least grants us a non-exclusive, non-transferable usage right unlimited in time for software and hardware products and the related documentation ("Software").
2. We are entitled to produce copies of the Software for the purpose of data back-up. With reference to a possible copyright notice of the author we are furthermore entitled to pass on the Software - completely or partially - to our customers in connection with contractual processing.

3. The Supplier assumes the warranty for the correctness of the Software and its data structure and ensures proper duplication.
4. For supplied Software which was developed or adapted particularly for us or whereby we are entitled to its processing or changes, we may demand depositing of the source code of the Software as well as stipulation of the author(s) at a Notary of our choice at our expense and on the basis of a mandate to act as trustee which authorises the Notary to hand over to us the deposited documentation in the event of the Supplier's liquidation or insolvency. In the event of the legitimate handover the Supplier now grants us a non-exclusive right unlimited in time to change the source code and to its altered or unaltered usage to an extent to which we are entitled to utilise the delivered software.
5. The Supplier warrants that no proprietary rights of third parties are violated in connection with his delivery. If we are held liable by a third party due to the infringement of such a proprietary right which is the responsibility of the Supplier, the Supplier is obligated to exempt us from these claims by third parties. The Supplier's obligation of exemption refers to all necessary expenditures incurring to us from or in connection with the claim by a third party.

§ 11 Confidentiality

1. We reserve right of ownership and technical and industrial property rights as well as copyrights to all illustrations, drawings, calculations, models and other information and/or documentation which we handed over to the Supplier for the contractual performance.
2. All illustrations, drawings, calculations, models and other information and/or documentation established for us by the Supplier have to be labelled with the reference: 'for Monier Roofing Components GmbH'. We now agree with the Supplier that the property as well as all usage rights to the thus labelled illustrations, drawings, calculations, models and other information and/or documentation is transferred to us and that the Supplier imparts us with the ownership to the illustrations, drawings, calculations, models and other information and/or documentation as custodian. All illustrations, drawings etc. provided by us are to be used exclusively for the manufacturing based on our order and have to be returned to us at any time and immediately upon demand, including all copies or duplications, also in electronic and/or digital form, such as data carriers and CD-ROM memories. Following the conclusion of the order they have to be returned to us unsolicited.
3. All illustrations, drawings, calculations, models and other information and/or documentation have to be treated strictly confidential and kept secret toward third parties unless the disclosure occurs with our explicit prior written consent. However, the obligation to confidentiality expires if and in as far as manufacturing know-how contained in the provided illustrations, drawings etc. has become public knowledge.
4. The above conditions apply accordingly for substances and materials as well as for tools, templates, samples and other objects which we provide to the Supplier. Such objects are - as long as they are not processed - to be stored separately at the expense of the Supplier and insured against destruction and loss to an appropriate extent. Processing, intermixture or combination of the provided objects by the Supplier is executed on our behalf. Analogously, we apply as manufacturer at the processing of the supplied goods and procure ownership to the product according to the statutory regulations.
5. The obligations of confidentiality according to these GPC also remain valid after the termination of this Agreement for a duration of 5 years; further legal claims (e.g. from §§ 17 cont. UWG (Unfair Competition Act) remain unaffected.
6. Third parties may only be informed regarding the business relationship with us with our consent.

§12 Reservation of title

The transfer of ownership of the goods to us occurs unconditionally and without consideration of the payment of the respective remuneration. In the course of proper business transactions we remain entitled to the on-selling of the goods under advance assignment of the respectively generated claims also prior to payment of the respective remuneration. In any case, all other forms of the reservation of title, particularly the extended or the forwarded reservation of title or the reservation of title extended to the processing are excluded so that any effectively declared reservation of title by the Supplier toward us only generates the effect of a simple reservation of title.

§ 13 Producer's liability

1. To the extent of the Supplier being responsible for product damage, he is obligated to exempt us from claims by third parties to the extent as the cause is based within his domain and organisation and he is liable himself in the external relationship.

2. In the context of his obligation for exemption the Supplier also has to compensate us for any expenditures according to §§ 683, 670 BGB (German Civil Code) which arise from or in the context of a recall action exercised by us. We shall inform the Supplier regarding the content and extent of the recall measures to be initiated - as far as possible and feasible - and provide him with the opportunity to make a statement. Further statutory claims remain unaffected.
3. The Supplier has to conclude and maintain product liability insurance with a flat rate sum insured of at least EUR 2.5 million per personal / property damage. The Supplier has to verify the existence of the insurance to us in writing upon demand.

§ 14 Termination of contract

1. With the existence of an important reason we are entitled to terminate the agreement with the Supplier effective immediately. An important reason particularly exists in case of
 - Cessation of the commercial activity of the Supplier;
 - Suspension of payment or inability to pay by the Supplier;
 - Initiation of insolvency proceedings pertaining to the assets of the Supplier or rejection of the initiation of the insolvency proceedings due to lack of assets, or
 - recurring (at least three times within a period of 6 (six) months) incomplete, late or defect delivery by the Supplier and prior warning.
2. If the creation of a total success represents the focal point in the Supplier's services and thus the law on contracts for work and services applies exclusively (this is particularly the case if the Supplier provides his contractual service at an already existing matter for us (e.g. property, building, machine), we are entitled to terminate the agreement at any time prior to the completion of the works. The legal consequences of § 649 BGB (German Civil Code) apply in this case.

§ 15 Place of fulfilment, Choice of law and Place of jurisdiction/Language

1. Unless otherwise stipulated in the order, the delivery address specified by us is simultaneously the place of fulfilment.
2. If individual conditions or parts of these GPC are ineffective, the effectiveness of the remaining conditions and parts remains unaffected.
3. The law of the Federal Republic of Germany applies for these GPC and all legal relationships between the Supplier and us, excluding all inter- and supra-national regulations, particularly the Convention on Contracts for the International Sale of Goods ("CISG"). However, prerequisites and effects of the reservation of title are subject to the laws of the respective location of the matter, in as far as the elected choice of law in favour of the German law is accordingly inadmissible or ineffective.
4. If the Supplier is an entrepreneur in terms of the Commercial Code, a legal person under public law or a special fund under public law, the exclusive place of jurisdiction for all direct and indirect disputes arising from the contractual relationship are the responsible courts in Frankfurt am Main, Germany. However, we are also entitled to raise claim at the place of fulfilment of the supply obligation or at the Supplier's registered office.
5. This English version of the GPC serves translation purposes only. In any case solely decisive is the German version which you can find under www.braas-monier.com/de/mrc-aeb.