

EXPORT CONDITIONS FOR THE SUPPLY OF MACHINERY

ETABO Energietechnik und Anlagenservice GmbH – Status 04/2021

A. Scope of Delivery

1. Delivery to be effected as specified in the written order acknowledgement. Additional agreements shall only be valid when confirmed by the supplier in writing.
2. The documents attached to the quotation, such as illustrations, drawings as well as data sheets indicating weights and capacities, give only approximate values, unless they are specifically marked as binding. All estimates, drawings and other specifications issued by the supplier shall remain his property. Copyright is reserved. They are subject to recall at any time. Neither such documents nor any copy thereof shall be lent or shown to any third party.
3. The purchaser may not transfer his rights resulting from the contract to any third party without supplier's explicit consent.

B. Terms of payment

1. Payment to be effected as follows and to be understood free supplier's bankers without any deduction:

30 % of the total order value on receipt of the supplier's order acknowledgement,
50 % upon receipt of main material in our manufacturing facility,
10 % pro rata prior upon notification that the principal parts of the supply are ready to be shipped against shipping documents
5 % pro rata after equipment has passed performance test
5 % after warranty period

The supplier reserves the right to require an irrevocable and confirmed letter of credit as surety.

2. Title to the goods supplied shall pass to the purchaser only after receipt of all payments. To the extent that the legality of title is subject to special regulations or formalities in force in the purchaser's country, the purchaser shall have to comply with them at his own expense.
3. Should payment not be effected by the agreed date, then interest shall be charged at a rate three per cent above the officially recognised current bank rate at the location of the supplier's registered office. The supplier is not obliged to notify the purchaser that he is in default.
4. If the supplier is informed either before or after the despatch of goods that the purchaser is in an adverse financial position, he shall be entitled to demand immediate payment in full or an adequate surety. Should the purchaser not meet this demand the supplier shall be entitled to withdraw from the contract whilst still retaining his claim to indemnification.

C. Delivery time

1. The delivery time commencing at the date of order acknowledgement is subject to receipt and clarification of all the documents and official licenses required. Furthermore, compliance with the delivery date shall be subject to the purchaser fulfilling his contractual obligations, in particular receipt of the agreed payment or the letter of credit, if required.
2. The delivery date is deemed to be met if the consignment is ready to be shipped upon the agreed date and the purchaser has been notified accordingly.
3. Partial deliveries are permitted.
4. If delivery is delayed for reasons beyond the supplier's reasonable control, such as force majeure, interruptions in operations, delays in the supply of essential raw materials, spoilage which may occur either at the supplier's or the subcontractor's works, then the delivery time shall be extended for a reasonable period, to the extent that these circumstances significantly affect the completion date applicable for the contract as a whole or for that part thereof which shall shortly become due.
5. Should a delay occur for reasons other than those stated above as a result of the supplier's negligence, then the purchaser shall not be entitled to indemnification. The purchaser shall be entitled to claim indemnification only if an explicit agreement has been made in writing and on condition that he is in a position to prove that he has suffered damage due to the delivery date being exceeded as a result of negligence. All further claims are excluded. This indemnification shall amount to max. 1/2 per cent for each month of delay up to a total of 5 per cent of that part of the entire supply which could not be put into operation owing to the fact that individual components were not completed in time. Such indemnification payable by the supplier according to the above understandings shall be settled in the final account.

D. Passing of risk

The risk shall pass to the purchaser at the latest upon shipment of the parts to be supplied. Should the despatch be delayed by circumstances beyond the supplier's reasonable control, the risk shall pass to the purchaser at the date on which the goods are ready to be shipped. The supplier is entitled to insure the goods to be supplied against fire, transport and other damages at the expense of the purchaser, unless the latter has provided proof that such insurance contracts have been concluded.

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E. Warranty

Provided that the purchaser himself has not ordered any alterations or repairs, the supplier shall be responsible for defects in the parts supplied. Such warranty shall also relate to absence of the qualities guaranteed.

1. All those parts which can be demonstrated to have become useless or significantly restricted in their use within a period of 12 months as from the passing of risk or from arrival at the place of destination, due to a circumstance present before the passing of risk and in particular defects relating to design, material or workmanship, shall be either repaired or replaced DAF German border or FOB German port at the supplier's discretion and free of charge to the purchaser. The supplier shall be informed in writing of such defects without delay. Should despatch or erection be delayed for reasons beyond the supplier's control, then the warranty period shall expire at the latest 24 months after the passing of risk. Any replaced parts shall become the property of the supplier.
2. The supplier is entitled to refuse to eliminate defects if the purchaser has not met his contractual obligations in particular with respect to the agreed terms of payment.
3. The provisions relating to delivery date and warranty shall be applied accordingly should repair work or replacement parts be defective. There shall be no compensation for default. The warranty shall expire at the end of the warranty period provided for the original item delivered.
4. Further claims on the part of the purchaser, in particular claims with respect to compensation for damages to items other than the item supplied, are excluded.

F. Purchaser's right to withdraw or to a reduction in price

1. If, due to force majeure, the supplier is not able to meet the contract in full, the purchaser shall be entitled to withdraw from the contract. Should the supplier not be able to fulfil part of the contract, the purchaser shall be entitled to claim a reasonable reduction in price.
2. Furthermore the purchaser shall be entitled to withdraw from the contract should the supplier not eliminate or repair acknowledged or proven defects as defined by the conditions of supply within a reasonable set additional period of time.
3. The purchaser shall only be entitled to withdraw from the contract if his interests in the supply are significantly prejudiced or thwarted as a result of the defects.
4. Further claims on the part of the purchaser shall be excluded.

G. Supplier's right to withdraw

In the event of unforeseen circumstances such as force majeure which significantly alter the economic importance or the subject of the supply or which have a significant effect on supplier's operations or even lead to the suspension of operations, the supplier shall be entitled to withdraw fully or partially from the contract. Should the supplier wish to avail himself of this right, he shall inform the purchaser accordingly within a reasonable period after recognition of the implications of the circumstances. The purchaser shall not be entitled to indemnification as a result of such a withdrawal.

H. Liability

1. Contractor's liability on all claims of any kind shall be – as far as legally permitted – limited to the extent and coverage of Contractor's public liability insurance policy. The contractual liability shall in no case exceed the contract value.
2. In no event, whether based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise the contractor, its agents, subcontractors and suppliers shall be liable for indirect, special, incidental, exemplary or consequential damages including but not limited to loss of profits or revenue, loss of use of any property, cost of capital, cost of purchased power, cost of substitute equipment, facilities or services, loss of production or claims of Customer's clients for such damages and the Customer will indemnify the Contractor against any such claim for the Customer's clients.

I. Jurisdiction

1. Any controversy arising out of the contract shall be settled by a court at the place of the supplier's head office. The supplier shall, however, be allowed to sue at the place of purchaser's head office.
2. The contract shall be governed by the substantive law of the Federal Republic of Germany. The "United Nations Convention on Contracts for the International Sale of Goods" shall not be applicable.

ETABO Energietechnik und Anlagenservice GmbH / April 2021