

# General (Purchasing) conditions for orders by I.L.E.E. AG



## 1. In General

- 1.1 These General Conditions for Orders are applicable supplementarily to the orders by I.L.E.E. AG (hereinafter referred to as "ILEE").
- 1.2 Conditions of Supplier that differ from orders by ILEE as well as from these Conditions for Orders are valid only to the extent that they have been expressly accepted by ILEE.
- 1.3 Each order shall be confirmed without delay by Supplier. If no confirmation of order results within 10 days after the order date, ILEE shall no longer be bound by the order.

- 1.4 Agreements and legally relevant declarations of the parties shall be in written form. Declarations via facsimile or email shall be deemed to be in written form.

## 2. Delivery and Shipment

- 2.1 The version of Incoterms as in force at the time of conclusion of the contract shall apply with respect to the interpretation of commercial provisions.
- 2.2 The order reference of ILEE shall be specified in each case in all shipment papers, correspondence and invoices.
- 2.3 Unless otherwise expressly agreed by the parties, all ancillary costs such as, e.g., for transport, packaging, insurance, export permits, import permits and other authorizations, customs, fees, etc., shall be borne by Supplier.
- 2.4 Supplier shall bear all risk of loss and of damage to the ordered goods until completed delivery to ILEE.
- 2.5 Supplier represents and warrants that no import and/or export restrictions exist, neither in whole nor in part, with respect to the delivery of the goods under Swiss law or any other law, or that the necessary permits are on hand. Supplier shall promptly inform ILEE of any restrictions.
- 2.6 ILEE shall be under no obligation to accept partial deliveries or excess deliveries.
- 2.7 Supplier shall arrange at its own costs for the packaging that is necessary for the delivery and transport of the goods. If the packaging is designated as belonging to Supplier, the latter shall be obligated to take the same back at its own cost.

## 3. Delivery Dates and Deadlines

- 3.1 The delivery deadlines or dates named in the order shall be binding.
- 3.2 All delays in delivery, if any, are to be communicated to ILEE immediately, together with an indication of the reasons and the expected duration.
- 3.3 If Supplier is in default, ILEE shall be entitled to the claims by law. In each case, the claim to delivery shall not lapse until ILEE claims damages based on non-performance or withdraws from the contract. The unconditional acceptance of the delayed delivery shall not entail any waiver of claims for compensation.

## 4. Prices and Terms of Payment

- 4.1 The prices listed in the order are in each case fixed prices that continue to apply even in case of changes to the price bases (salaries, prices for materials, etc.).
- 4.2 Invoices shall be required to separately show the value-added tax and itemize the services provided in a clear, concise and comprehensible manner, together with an indication of the order reference. Invoices that are not properly drawn up shall be deemed to not have been received and will be returned by ILEE.

- 4.3 Payment shall be made in the customary commercial manner within 60 days after delivery of the goods and receipt of the invoice, but at the earliest within 60 days after the agreed upon delivery date. In the case of payment within 30 days, Supplier shall grant to ILEE a discount of at least two percent.

- 4.4 In the case of a defective or incomplete delivery, ILEE shall be entitled to withhold the entire payment until proper performance, without any loss of discounts and similar payment benefits.

## 5. Warranties

- 5.1 Supplier shall be liable both for the qualities of the goods that are guaranteed or otherwise agreed upon as well as for the absence of any physical or legal defects that cancel or reduce the value of the goods or their suitability for the intended use. Supplier shall be liable without regard to the cause of the defect and irrespective of fault. If it is disputed between the parties as to whether a defect exists, the burden of proof shall rest with Supplier.
- 5.2 In the event of a case of warranty based on defects in the goods, ILEE shall, apart from the statutory right to a price reduction and cancellation of the purchase, be entitled to request at its option the subsequently improvement of defects free of charge at the location of the goods or the delivery of non-defective replacement goods free of charge. In urgent cases, ILEE may, at the cost of Supplier, have the subsequent improvement of defects or the replacement delivery be carried out by a third party or carry the same out itself. Supplier shall bear all ancillary costs of the subsequent improvement and replacement delivery. If damages arise based on a defect, ILEE shall, apart from the above-named rights upon defect, have a claim to compensation independent of fault.

- 5.3 A warranty period of two years exists with respect to all rights upon defect, calculated as from the date of the delivery. During this period, notice may be given at any time as to defects of any kind, without it being possible to charge ILEE with having violated the statutory inspection and notice deadlines. Supplier shall be liable for all defects that are notified to it by ILEE during the warranty period. Supplier shall be liable with respect to replacement deliveries and subsequent improvement work to the same extent as with respect to the original delivery. The warranty period shall commence to run anew upon the date of the replacement delivery or acceptance.

- 5.4 If a similar type of defect appears in connection with more than five percent of the delivery (serial defect), ILEE shall be entitled to reject the entire delivery and to assert the above-named rights upon defect for the entire delivery.

- 5.5 All rights upon defect (including, among others, the right to a cancellation of the purchase, reduction in the price, subsequent improvement, replacement delivery and compensation) shall be time-barred one year after expiration of the warranty period.

## 6. Product Liability

- 6.1 Supplier shall indemnify ILEE in full against claims by third parties based on product liability, provided that such claims are attributable to a defect in the delivered goods. It shall indemnify ILEE for all damages that it has incurred based on such defect condition of its products.
- 6.2 The damages to be indemnified by Supplier also include the costs of a provisional recall campaign by ILEE. ILEE shall inform Supplier about the content and scope of recall campaigns to the extent

reasonable and provide Supplier an opportunity to comment.

## 7. Intellectual Property

- 7.1 Supplier represents and warrants that the delivered goods and their intended use by ILEE or its customers does not infringe any patents, copyrights, trademarks or other intellectual property rights of third parties in Switzerland or abroad. Supplier shall indemnify ILEE and its customers in full against all claims by third parties based on any such infringement.

## 8. Production Means

- 8.1 Production means (e.g., tools, devices, models, documents, templates) that ILEE makes available, or for which ILEE pays, in whole or in part, shall belong to ILEE and be identified as such. All intellectual property rights relating to the documents made available (e.g., plans, sketches, drawings, calculations) shall remain with ILEE.
- 8.2 Production means may only be used to carry out orders of ILEE. Supplier shall be prohibited, in particular, from making them available to third parties, copying them or destroying them in the absence of the prior express consent of ILEE. The production means shall be handed over to ILEE upon request. A right of retention with respect to production means is precluded.
- 8.3 Until the production means have been handed over to ILEE, Supplier shall bear the risk of loss and damages, but not the risk of normal wear and tear. Supplier shall be under an obligation to insure the production means against this risk, at its own cost.

## 9. Manufacturing and Business Secrets

Orders by ILEE as well as all knowledge on the part of Supplier concerning technical and commercial matters of ILEE that is not evident, such as technical documents and business relationships, are strictly confidential and may not be made available to third parties without the prior express consent of ILEE. Supplier shall impose this confidentiality obligation on its agents.

## 10. Set Offs

Supplier shall be permitted to make a set-off of counterclaims only with the express consent of ILEE.

## 11. Order of Precedence of Contract Documents

In the case of contradictions in the contract documents, the following order of precedence applies:

- a) Orders by ILEE;
- b) Quality control agreements, if any;
- c) These Conditions for Orders.

## 12. Applicable Law and Jurisdiction

12.1 The legal relationship shall be governed by substantive Swiss law, with the exclusion of the United Nations Convention on the International Sale of Goods (CISG) of April 11, 1980.

12.2 The place of jurisdiction for ILEE and Supplier shall be Zurich. ILEE shall be entitled, however, to bring a legal action against Supplier at the latter's place of business.

February 2006