

Conditions of Purchase

1. Scope

- 1.1 All legal relations between Benninger AG, Switzerland or one of its associated companies enlisted in paragraph 1.2 (subsequently jointly referred to as "Benninger" or "we") and a supplier of deliveries and services (subsequently referred to as "Supplier" or as "Deliveries" and/or "Goods" respectively) shall be exclusively based on these Conditions of Purchase. Divergent conditions of Supplier or conditions of Supplier deviating from these Conditions of Purchase shall only be applicable if we have explicitly consented to their effectiveness in writing. These Conditions of Purchase shall also be exclusively applicable if we accept Supplier's Delivery without any reservation while being aware of adverse conditions of Supplier or conditions of Supplier deviating from these Conditions of Purchase. Changes and supplements of these Conditions of Purchase shall be in writing. These Conditions of Purchase shall also be applicable to all future business transactions with Supplier.
- 1.2 Associated companies in the sense of paragraph 1.1 shall be Benninger Zell GmbH, Germany, Indian Limited, India, Textile Machinery, China, and Benninger Spa, Italy.

2. Orders

- 2.1 Purchase orders and agreements shall only be binding if they are in writing. They may also be forwarded by remote data transmission or by machine readable data carriers. Oral agreements with our staff members shall require our written confirmation.
- 2.2 Supplier shall accept the purchase order within a period of three working days after the date of the purchase order in writing. If Supplier does not accept it within this period, we shall be entitled to cancel our purchase order without any claims arising to Supplier from this cancellation.
- 2.3 We shall be entitled to demand appropriate changes of the delivery item in relation to design and construction. The effects, particularly in relation to cost increases or reductions as well as delivery dates, shall be appropriately arranged by mutual consent.
- 2.4 When bidding documents are presented the Supplier shall already be obliged to inform us of possible deficiencies, particularly in relation to the observation of the state of science and the art as well as environmental protection provisions or technical expediency.

3. Delivery dates and periods

- 3.1 Agreed delivery dates and periods shall be binding. The receipt of contract-conforming Goods at our place of business or at the delivery address stated by us ("Destination") shall be authoritative for meeting the dates and periods.
- 3.2 As soon as Supplier recognizes that it cannot meet the agreed time of delivery Supplier shall immediately inform us in writing or by electronic means (e-mail). At its own expense, Supplier shall take all measures to meet the agreed delivery dates.
- 3.3 Supplier shall reimburse us for any damage caused by delayed performance. We shall be entitled to demand a contractual penalty amounting to 1% of the total price of the Delivery for each commenced week of delay, however, limited to 10% of this value. Supplier may provide evidence that no or considerably less damage was incurred by its delayed performance. We reserve any further legal rights. In particular, we shall be entitled to assert higher damage caused by delayed performance or to cancel the contract and demand compensation in damages instead of performance after the expiry of an unused appropriate period of grace.
- 3.4 Our acceptance of the delayed Delivery without any reservation shall not constitute a waiver of our claims mentioned.
- 3.5 In case of a delay, we are - in urgent cases or after the expiry of an appropriate period of grace stipulated by us - entitled to obtain replacement from a third party.

- 3.6 All additional costs incurred by delayed Deliveries shall be reimbursed by Supplier, e.g. all arising costs and charges for express freight, express delivery, telephone or teleprinter, etc..

4. Delivery

- 4.1 If nothing to the contrary has been explicitly agreed on, protection devices shall be included in the scope of delivery. If the same are missing as Goods are delivered or after the performance of work, they shall be immediately supplied and assembled free of charge.
- 4.2 Assembly and operating instructions or instruction manuals as well as spare part lists and other documents needed or legally required for proper utilization shall also be part of the scope of delivery.

5. Acceptance

- 5.1 Supplier shall not be entitled to excess or short deliveries. If a delivery schedule has been stipulated, we shall only be obliged to accept the quantities stated in the same in a binding manner. We shall be entitled to store or return Deliveries which are effected prior to or after the agreed date at Supplier's cost and risk.
- 5.2 If we and the Supplier agreed an acceptance test to determine the performance, the test shall be conducted in accordance with the common rules of the art.
- 5.3 Force majeure, industrial conflict (strikes and lockouts), plant interruption, lack of energy and raw materials, un-rests and other unforeseeable and inevitable events at our or our customers' premises for which we are not responsible shall release us from meeting our contractual obligations for the duration of the interruption and to the extent of its effects. The same shall be applicable to the delivery period if such circumstances occur under the same conditions in Supplier's sphere.
- 5.4 We shall be entitled to investigate the progress of work and conduct acceptances at the Supplier's manufacturing plant (supplier audit).

6. Prices and payment

- 6.1 Agreed prices shall be DDP ("delivered duty paid") (INCOTERMS 2000) at defined Destination unloading insured, including packaging.
- 6.2 If nothing to the contrary has been agreed on, payment will be effected under the precondition of proper delivery within 60 days without any deduction.
- 6.3 Payment periods shall start after receipt of proper Goods, however, not before the agreed date of delivery. The selection of the means of payment shall be at our discretion. If a deficiency occurs, we are entitled to postpone payment proportionately until proper re-performance.

7. Passage of risk

The risk shall pass to us when and as far as the Delivery has been properly handed over at the Destination and/or has been accepted by us.

8. Packaging and dispatch

- 8.1 Goods shall be packed as customary in trade or, if re-requested by us, in special packaging in accordance with our instructions.
- 8.2 We are entitled to specify the type of transport and the carrier. Otherwise Supplier shall select the type of transportation which is the most favorable for us.
- 8.3 The Goods shall be accompanied by one copy of dispatch documents containing the exact description, quantity, weight (gross and net), type and packaging of the Goods or the item. These dispatch documents shall include a pro forma invoice. If a Delivery is not accompanied by the required dispatch documents or the above details are missing in the dispatch documents, we shall store the Goods at Supplier's cost and risk until the dispatch documents or all details arrive.

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- 8.4 If packaging has been charged separately on basis of a special agreement, the same will be returned freight unpaid at Supplier's expense against a credit of 2/3 of the invoiced amount.
- 9. Invoicing**
- 9.1 Invoices shall always completely state our purchase order number, the purchase order date, our supplier number, the bank account details and the order data contained in the purchase order. Should an invoice not contain these details or should they be incomplete, it cannot be checked and paid; it will be returned to Supplier.
- 9.2 If possible, the invoices shall be made out as collective invoices and the originals shall be forwarded to us separately after delivery (without any copies and paying-in slips).
- 10. Incoming inspection and liability for defects**
- 10.1 After receipt of the Delivery we shall inspect the Goods in respect of obvious defects, identity, quantity and transport damage. There shall not be any further inspection obligation. Supplier shall be informed of defects within an appropriate period of time after their discovery. To this extent, Supplier waives its plea of a belated notice of defects.
- 10.2 Supplier warrants the faultlessness of the delivered item upon delivery to us or our customer, he particularly warrants the agreed quality, the suitability for the usage presupposed by the contracting parties as well as that the delivered Goods correspond to the state of the art in relation to engineering quality, grade and design and that the values concerning material, performance or efficiency stated by Supplier are observed. Goods shall correspond to the respectively valid legal provisions in the country of production and the country of destination which we shall let Supplier know upon request.
- 10.3 Our warranty claims shall be subject to legal provisions if nothing to the contrary is subsequently stated. We shall be entitled to demand rework or replacement free of charge at our discretion. In urgent cases or after the unsuccessful expiry of an appropriated period of time, we shall be entitled to rectify the defects ourselves or have them rectified by a third party or to obtain replacement in any other manner at Supplier's expense.
- 10.4 Replacement delivery shall be made free of freight and packaging to the place of destination. Return shipments of unusable Goods shall be effected at Supplier's expense and risk.
- 10.5 If nothing has been agreed to the contrary, warranty claims shall cease within 36 months after delivery or - if an acceptance is agreed on - upon acceptance. In case of replacement, a new period of 36 months shall commence.
- 10.6 If the faultiness of a delivered item only becomes apparent after its assembly in an item manufactured by us, Supplier shall refund to us all costs arising from the remedy of the damages at the place of usage during the warranty period. We shall inform Supplier of the place of usage upon request.
- 10.7 If defects with the same cause of error frequently occur (serial damage), Supplier commits itself to provide unobjectionable parts for the series and for rework or replacement as soon as possible.
- 10.8 Supplier shall be liable for defensive measures in relation to damages, particularly preventive exchange, within the framework of legal provisions. In such cases, Supplier shall also bear the costs of a recall action.
- 11. Liability**
- 11.1 If we are held liable by a third party, Supplier shall be obliged to indemnify us against such claims upon first written request if and as far as the damage has been caused by products provided by Supplier. However, in cases of liability for fault this shall only be applicable if Supplier caused the damages through its fault. If we participate in causing the fault, the loss shall be shared in an appropriate proportion.
- 11.2 Supplier shall have sufficient liability insurance cover and shall provide evidence of this to us upon request.
- 11.3 Claims for damages against us - irrespective of their kind - shall be excluded if we, our legal representatives or persons employed in performing an obligation for us cause damages due to ordinary negligence. This exclusion of liability shall neither be applicable to bodily injury nor to an infringement of essential contractual obligations endangering the performance of the purpose of the contract. However, our liability shall be limited to the damages typical for the contract and foreseeable.
- 12. Protection provisions**
- The Goods to be supplied shall particularly correspond to relevant legal labour and accident prevention provisions, the regulations of the machine protection act, the laws and ordinances concerning noise abatement and environmental protection as well as the accident prevention provisions of the relevant occupational accident insurance and the control of pollution act, e.g. the Occupational Accident Insurance Textile Clothing as well as the provisions respectively applicable at the place of destination.
- 13. Proprietary rights of third parties**
- Supplier shall be liable for that the use of Goods delivered by Supplier neither directly nor indirectly infringes domestic or foreign intangible proprietary rights and Supplier shall indemnify us and our customers against all claims of third parties resulting from an infringement of such rights. In addition, Supplier shall be liable for any further direct or indirect damage incurred to us from an infringement of such rights. This shall not be applicable as far as Supplier produces Goods exclusively in accordance with our drawings and models and does not know or is not obliged to know that the production of such Goods constitutes a legal infringement in the sense mentioned above.
- 14. Samples, drawings, means of production**
- 14.1 Documents of any kind, e.g. samples, models and similar items, which we make available to Supplier or Supplier produces for our account shall remain our property or become our property upon their production. We hold all rights in such documents. They shall be returned to us without request and costs as soon as they are not required any more - e.g. for the performance of a purchase order. They shall not be made available to third parties.
- 14.2 Means of production handed over to Supplier or means of production manufactured in accordance with our instructions may not be copied or sold, their ownership transferred by way of security, pledged or passed on in any other way neither encumbered in any way with rights of third parties nor used for third parties without our explicit written consent. The same shall be applicable to Goods produced with such means of production.
- 15. Confidentiality**
- 15.1 Supplier commits itself, - to keep secret all information which Supplier consciously or accidentally receives from us in the course of our business relations, e.g. all technical information, trade secrets and details of our purchase orders, e.g. quantities, technical design, terms and conditions, etc. ("Information") as well as - insights which Supplier gains from our Information, in relation to third parties.
- 15.2 The inclusion of our company in a list of references, disclosing our business relations or the use of our purchase order for advertising purposes shall only be permitted after our written consent has been obtained.
- 15.3 Documents as well as other items of any kind, e.g. samples, drawings, tools, models, and similar items which we put at the disposal of Supplier shall be returned to us without request and cost as soon as they are not required any more for the performance of the purchase order. Such items shall neither

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be used by Supplier for its own purposes nor made available to third parties.

- 15.4 Supplier commits itself to pay a contractual penalty of 30% of the order value in case of infringement(s) on this obligation to maintain secrecy. Furthermore, in particularly severe cases we shall be entitled to cancel the whole contractual relationship with Supplier without notice and compensation and to demand repayment of possibly already effected payments. A particularly severe infringement is especially constituted if Supplier passes on its acquired or received knowledge to third parties which are in competition with us.

16. Materials provided by us

- 16.1 Materials provided by us shall remain our property. Such materials shall be clearly and separately stored as our property and shall be sufficiently insured against fire, water and theft at Suppliers expense and may only be used in accordance with their intended purpose. Unused materials shall be returned to us together with the shipment of Goods produced.
- 16.2 Processing or the transformation of materials provided by us shall be done by Supplier only with our consent and always for us. If the material is processed together with items not belonging to us, we shall acquire joint ownership in the new item at the ratio of the value of the materials provided by us to the other processed items at the time of processing. Furthermore, what is applicable to the materials provided by us shall also be applicable to the item generated by processing.

17. Auxiliary duties

- 17.1 Supplier shall be obliged to label Goods in the manner specified by us.
- 17.2 Supplier shall ensure the delivery of spare parts for 10 years from the last series or main Delivery.
- 17.3 If Supplier intends to stop the production of a product delivered to us, Supplier shall be obliged to inform us in writing of this at least one year prior to the suspension of production. If our Supplier is a dealer, Supplier shall be obliged to inform us immediately in writing after the receipt of the information that the product delivered to us will be suspended.

18. Assignment

Supplier shall require our prior consent for the assignment of claims against us as well as the transfer of the collection of receivables from us to third parties. Concerning a reservation of title agreed between Supplier and its sub-supplier our consent shall be considered as granted.

19. Place of fulfilment, place of jurisdiction and applicable law

- 19.1 Place of fulfilment for all Deliveries and services as well as payments shall be the place of destination stipulated by us.
- 19.2 Place of jurisdiction shall be the competent court for the domicile of Benninger AG in Uzwil, Switzerland; however, we shall also be entitled to bring a matter before the court competent for Supplier's domicile. Material Swiss law shall be applicable, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 19.3 Should a provision of these Conditions and other agreements be or become ineffective, this shall not affect the validity of the other provisions of the contract.

General Management
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