

General Terms and Conditions of Purchase of TEST-FUCHS Ing. Fritz Fuchs, Issue November 2016

1. Scope

1.1. These General Terms and Conditions of Purchase apply to all orders (deliveries and services) from TEST-FUCHS Ing. Fritz Fuchs GmbH (TEST-FUCHS).

1.2. For our orders and delivery and service completion of suppliers, only the following conditions of purchase are valid. Deviating purchase conditions from the supplier are explicitly contradicted. The positive confirmation of delivery and service or payment does not automatically signify agreeing with the sale conditions of the supplier. In case of some contradictions between the order text or the text of the documents listed in the order and the following purchase conditions, the order text and the text of the documents listed in the order are preferential.

2. Award of contract

2.1. These Terms and Conditions of Purchase shall become an integral component of the contract upon acceptance of an order. Only written orders signed by an authorized person are valid. Changes, amendments or collateral agreements made before, during or after contract execution require the written confirmation by TEST-FUCHS.

3. Order confirmation, general terms and conditions of the contractor

3.1. TEST-FUCHS shall receive prompt confirmation of order acceptance. TEST-FUCHS reserves the right to cancel, without compensation, an order already placed unless TEST-FUCHS has received a proper order confirmation within a reasonable period, but within 7 business days the latest.

3.2. The Contractor's General Terms and Conditions shall not apply unless accepted by TEST-FUCHS in writing.

4. Delivery, default

4.1. The deadlines specified in the order are binding and shall be adhered to without fail. The Contractor shall notify TEST-FUCHS promptly if there are signs of a potential delay or of the agreed deadlines not being met, stating the reasons and expected duration of the delay.

4.2. Regardless of culpability on the part of the Contractor and proof of actual damage, TEST-FUCHS is within its rights to charge a penalty in the amount of 0.5% of the overall order value for each calendar day, or part thereof, the delivery or service was delayed, up to a maximum of 10% of the entire order value. TEST-FUCHS reserves the right to claim damages exceeding the penalty. In the event delivery is delayed, TEST-FUCHS is entitled to withdraw from the contract after a reasonable grace period has been set.

4.3. For deliveries including installation or assembly and upon the performance of services, the risk is transferred upon acceptance, in case of deliveries without installation or assembly upon receipt by TEST-FUCHS at the destination. Deliveries to TEST-FUCHS shall be made in accordance with Incoterms® 2010 to DAP TEST-FUCHS Ing. Fritz Fuchs GmbH, Albert-Einstein-Str. 4, D-85435 Erding.

4.4. Partial deliveries or advance deliveries require our written consent. In case of unsolicited premature delivery the term of payment shall commence at the originally agreed date of delivery.

4.5. Each delivery shall be accompanied by a detailed delivery slip. Delivery slips shall include our order number, our item number and designation, the quantity of parts delivered as well as a list of all documents accompanying the delivery. The costs for transport insurance are not reimbursable.

5. Payment

5.1. The payment term of the bill commences upon complete acceptance of the delivery or performance of service by TEST-FUCHS and receipt of the proper bill. To the extent the Contractor is obligated to provide documents relating to materials testing, inspections/testing, and quality or other documentation, receipt of these documents is a prerequisite for complete delivery or performance.

5.2. Unless agreed otherwise, TEST-FUCHS may choose, at its discretion, payments within 14 days with a 3% discount or net payments within 30 days.

5.3. Electronic bills (with digital signature) are to be sent to the following e-mail address only:
tfed-buchhaltung@test-fuchs.com

6. Acceptance, notification of defects, liability for defects and product liability

6.1. The transfer of goods (acceptance) as well as the inspection for completeness and any visible defects shall take place within a reasonable period after receipt of the goods.

6.2. The supplier is responsible that the goods are free of material and title defects. TEST-FUCHS shall notify the Contractor of any defects detected as quickly as possible, but no later than within 15 business days without the receipt being seen as contractual due to the elapsed period of time.

6.3. The Contractor warrants the use of brand-new materials best suited for the purpose, as well as the proper implementation conforming to drawing, functional construction and flawless assembly. The Contractor shall guarantee its deliveries and services for a period of three years. In case of deliveries and services firmly attached to buildings and/or properties, the warranty period is five years and four weeks. Upon elimination of the defects complained about, the warranty period for the replacement delivery or service item will commence anew. For deliveries the warranty period begins with the installation or assembly and for services upon acceptance; for deliveries without installation or assembly the warranty period begins with the receipt at the "place of use", for hidden defects upon detection. For deliveries to locations where TEST-FUCHS carries out job orders outside its plants or shops, using the goods delivered, the warranty period begins upon acceptance of the service to be rendered by TEST-FUCHS by its client. The written assertion of the warranty period by TEST-FUCHS is adequate for preserving it.

6.4. At the discretion of TEST-FUCHS, the Contractor shall at its expense either promptly eliminate any defects appearing within the above warranty periods or redeliver the goods or services free of defects within the period specified. In any case, TEST-FUCHS is also within its rights to demand reimbursement of all costs associated with the elimination of the defect, such as dismantling and installation costs. In urgent cases, including, but not limited to warding off imminent dangers or preventing excessive damage, we are within our rights to eliminate the defects detected at the Contractor's expense.

6.5. The contractor shall indemnify and hold TEST-FUCHS harmless in case of patent, copyright, brand and design protection disputes and warrant the unrestricted use of the goods delivered.

6.6. For the case that some customer or third party makes demands on TEST-FUCHS due to product liability, the supplier is obligated to exempt us from such demands if the damage is caused by a failure of the delivery goods. In these cases, the supplier is responsible for several costs and expenses including the costs for prosecution.

If a safety-relevant failure of the articles for sale causes some product recall or authorities order a recall, the supplier is responsible for several costs and expenses of the recall campaign. The content and the scope of delivery of such a recall will be coordinated by the supplier and us as far as possible and reasonable. On behalf of the supplier, we are particularly authorized for acting if the supplier is not equipped for any recall action performance (e.g. missing service organization) within his business activities. Thus, the legal regulations are valid.

7. Place of fulfilment, applicable law, place of jurisdiction, severability, reservation clause

7.1. The place of fulfilment for deliveries or services is Erding.

7.2. The applicable law is German law only. The applicability of the United Nations Convention on Contracts for International Sale of Goods (CISG) is categorically excluded if this is admissible by law.

7.3. The place of jurisdiction is Erding.

7.4. In case, single provisions are or become invalid, the validity of the remaining provisions remains intact.

8. Confidentiality

The Contractor agrees to keep confidential all information about TEST-FUCHS disclosed in conjunction with the order or the contents of the order, unless the information is public knowledge or the Contractor has otherwise become lawfully aware of it. The Contractor further agrees to keep confidential all results or partial results developed while filling the order and to use said information solely for filling this order. Should the Contractor engage a third party to fulfil its contractual obligations, it shall obligate the third party contractually to the corresponding confidentiality requirements.

9. Substance declaration, RoHS, hazardous substances

9.1. The Contractor warrants that the deliveries to which it is obligated based on the order are in compliance with RoHS (Restriction of the use of certain Hazardous Substances in Electrical and Electronic Equipment) and therefore meet the thresholds associated with the RoHS guideline for restricted use of certain hazardous substances in electric and electronic devices (EC Directive 2002/95/EC) at the time of delivery.

9.2. If the Contractor supplies products permitted by law but nevertheless legally subject to substance restrictions and/or substance reporting requirements (e.g. REACH - Registration, Evaluation, Authorisation and Restriction of Chemicals), the Contractor shall declare them no later than upon initial product delivery.

9.3. If the delivery includes goods to be classified as hazardous goods according to international regulations, the Contractor shall notify TEST-FUCHS no later than upon order confirmation.

9.4. Packaging timber shall meet applicable EC phytosanitary requirements.