



## Terms and Conditions of Purchase

Institut für Luft- und Kältetechnik gemeinnützige Gesellschaft mbH (ILK)

### 1. Introduction

These Terms and Conditions of Purchase apply to all orders for services and deliveries from the ILK. Contractors' contrary provisions do not become part of the contract, even if the ILK has not expressly objected to them. Agreement with the content of the subject matter of the contract does not imply agreement with the terms and conditions of the respective contractual partner.

### 2. Offers, orders, written-form requirement

- a) The preparation of offers and/or cost estimates by the contractor are free of charge. Neither does the ILK assume any costs, nor does it pay any remuneration for preliminary services (visits, planning and others) provided by the client in connection with the submission of offers, unless this has been agreed expressly in individual cases.
- b) Orders, their variations or supplements or other agreements made in the context of any contract concluded are binding as soon as they have been declared or confirmed by the ILK in writing. This written-form requirement is also deemed observed if submitted by fax or e-mail.

### 3. Prices

Unless agreed otherwise, all prices are understood as CIP Destination. They shall apply to all deliveries and services which the contractor has to effect up to and at the agreed place of receipt until the fulfilment of his performance duties.

### 4. Shipping instructions, place of origin of goods

- a) For any delivery to the ILK, a precise despatch/delivery note is to be submitted to the ILK on the date of delivery. The contractor is held liable for any consequences of issuing incorrect delivery notes. All despatch documentation shall include ILK's order No. and the recipient's details. Transport insurance shall be taken out by the contractor at his own expense, unless otherwise expressly agreed in writing. If the delivery involves hazardous materials which are subject to special national and international shipping regulations, the contractor shall pack, label and ship them accordingly. If required, a safety data sheet shall be enclosed by the contractor.
- b) If the delivery must comply with the conditions of origin of the preferential treaty of the EU, the contractor shall also submit the respective certificates of origin.
- c) The contractor must take back packaging material at the place of delivery free of charge.

### 5. Property, industrial property rights, copyright

Drawings, samples, recipes and other documents as well as auxiliary materials that the ILK provides to the contractor with the aim to execute orders remain the property of the ILK. They must only be used for their intended purpose and returned upon request.

Any documentation, information on material and other know-how provided to the contractor that becomes known in the course of business cooperation must be regarded as confidential and must not be made available or disclosed to any third parties without the express written consent by the ILK. The contractor shall also keep confidential any knowledge and results he obtains through executing an order; this does not apply if such knowledge or results have become known in the public domain without the contractor's involvement. The contractor shall particularly respect ILK's copyrights and other industrial property rights. Their utilisation shall be permitted only in the context with contractually agreed upon purposes. The contractor must not, on his own, exploit or have exploited any products derived from documentation, drawings, models and other material provided by the ILK or made in accordance with specifications elaborated by the ILK. He must neither offer nor deliver them to third parties.

### 6. Deadlines, time limits

- a) The receipt of the faultless delivery and/or service at the place of receipt or the successfully completed acceptance, if such is agreed or provided for by law, shall be decisive for compliance with agreed deadlines or dates of delivery.
- b) As soon as the contractor realises that he will be, in full or partially, unable to meet agreed deadlines or dates of delivery, he must inform the ILK without delay, stating the reasons and the expected duration of such delay. Respective notifications by the contractor do not invalidate the legal rights and claims to which the ILK is entitled in the event of delay.

### 7. Contractual penalty due to default

If a contractual penalty has been agreed and incurred in the event of delay, the ILK can assert this until the invoice for the delayed deliveries and services has been settled, without the ILK having to reserve the right to do so at the time of acceptance.

### 8. Partial, excess or short deliveries

Partial deliveries or partial services require the prior written consent of the ILK. If the ILK accepts such deliveries without its prior consent, this does not establish any early maturity of payment obligations nor any agreement to assuming additional transport costs. In individual cases, the ILK reserves the right to accept excess or short deliveries. If deliveries are made in excess without any prior written consent, the ILK is entitled to reject the delivery, to warehouse it at the contractor's expense or to return it to the contractor.

### 9. Transfer of risk, acceptance, force majeure

- a) The contractor shall bear the risk of accidental loss or accidental deterioration until the arrival of deliveries at their destination. If acceptance is provided for or agreed by law, the contractor shall bear this risk until acceptance.
- b) Cases of force majeure (in particular of industrial action) and other unforeseeable circumstances beyond ILK's control entitle the ILK to postpone the receipt of deliveries and/or services or acceptance accordingly.
- c) Generally, the ILK is obliged to accept any deliveries only if they render the quality features as agreed.

### 10. Invoicing, payment

- a) Invoices are to be submitted in writing or as a PDF document to be e-mailed to [rechnung@ilk-dresden.de](mailto:rechnung@ilk-dresden.de) after complete delivery free of defects, completion of services or, in the case of performance-related services, after their acceptance for each order – indicating all job order details. Invoices not stating any order numbers will be returned to the contractor unprocessed.
- b) Unless otherwise agreed in writing, payment of properly submitted invoices shall be made within 30 days net. The period begins upon receipt of the invoice, but not before the contract has been fulfilled and/or accepted without defects. Payment is deemed to have been made on time if the ILK has instructed the bank to make payment on the last day of the period or, in the case of payment by cheque, has posted it.

### 11. Complaints of defects, rights in the event of defects

- a) To the extent that the commercial duty to inspect and give notice of defects applies, ILK's duty is limited to inspecting the goods for quantity and identity, externally recognisable transport or packaging damage and randomly checking the goods for their essential characteristics. If obvious defects are identifiable, the ILK must notify the contractor of these immediately, at the latest within five working days of delivery, other defects immediately after their discovery. In cases of doubt about quantities, weights and dimensions, the measurement values determined at ILK's incoming goods inspection is decisive.
- b) The contractor owes flawless delivery and services. In particular, these must be of the agreed characteristics, comply with the intended use, the current state of the art and generally recognised technical and occupational safety and health regulations of authorities and trade associations and be in accordance with the relevant statutory provisions. To the extent products are concerned that are subject to the Foodstuffs and Consumer Goods Act, its requirements must be complied with. The release of drawings, samples and other documents (e.g., documents, software, etc.) submitted by the ILK does not affect the contractor's responsibility for the proper fulfilment of the contract.
- c) In the event of defects and in the event of a warranty claim, the ILK is entitled to its statutory rights regarding such claims. Insofar as warranty claims go beyond the statutory rights in the case of defects, these remain unaffected by this. Claims for defects that are subject to the statute of limitations are subject to a period of 36 months, beginning with delivery and/or performance or acceptance, if such is provided for or agreed by law. Longer statutory limitation periods for the limitation of claims for defects and the course of the statutory limitation period for guarantees shall remain unaffected by this.

- d) If a defect becomes apparent within the limitation period, the ILK is entitled, at its own discretion, to demand subsequent performance by rework, subsequent delivery or new production within a reasonable period. In urgent cases, if the contractor cannot be reached and there is a risk of disproportionately high damage occurring, the ILK has the right to remedy the defect at the expense and risk of the contractor or to have it remedied by third parties. The ILK will inform the contractor of such measures without delay.
- e) If the subsequent performance by the contractor has not taken place within a reasonable period of grace, has failed or if the setting of the deadline was dispensable, the ILK can withdraw from the contract in accordance with the statutory provisions and demand damages in lieu of performance, reimbursement for futile expenses or a reduction in price.

#### 12. Third parties' property rights

The contractor ensures that the ILK does not infringe copyrights, patents or other third parties' industrial property rights through the contractual use or sale of its deliveries and/or services. The contractor indemnifies the ILK against all claims made against the ILK for infringement of an industrial property right and assumes the costs of enforcing the rights if these claims are based on a culpable breach of duty on his part. In the event of a claim, the ILK will inform the contractor without delay.

#### 13. Product liability, insurance

- a) The contractor shall indemnify the ILK against all claims arising from product liability if these can be attributed to a defect in the delivery and/or service provided by the contractor. Subject to the same conditions, the contractor is also liable for damages incurred by the ILK in cases that require precautionary measures that are reasonable in terms of their nature and scope, e.g., public warnings or recalls. The right of the ILK to claim its own damages against the contractor remains unaffected by this.
- b) The contractor undertakes to insure risks appropriately and provides proof of his insurance policy upon request.

#### 14. Data protection

In compliance with legal requirements, the ILK is entitled to save and process all data required from the contractor in the course of fulfilling the contractual relationship.

#### 15. References/advertising

The contractor is not entitled to use any information about an intended or existing collaboration for purposes of reference or advertising without prior consent in writing. Furthermore, taking photos on ILK's premises and operating sites as well as their use and/or publication in any way is prohibited without ILK's express written consent.

#### 16. Subcontracting, assignment, offsetting

- a) The contractor may subcontract the execution of orders or essential parts thereof to third parties only with ILK's prior written consent.
- b) The contractor may only assign its claim against the ILK to third parties or have it collected by third parties with prior written consent, unless the claims are legally established or undisputed.
- c) The contractor's retention of title regulations, should they go beyond the simple retention of title, shall not apply. They require prior written agreement in individual cases. If, nevertheless, the case emerges that subcontractors and/or own suppliers assert property rights, co-ownership rights or rights of lien against the ILK or have compulsory enforcement measures carried out, the contractor indemnifies the ILK for all possible damages incurred by the ILK as a result.

#### 17. Miscellaneous

The contractor acknowledges ILK's General Business Principles to the extent that it does not itself have a comparable Code of Conduct.

Reviewed last: December 2021