

# General Conditions of Purchase of Phönix Fluss- und Schwerspat – Bergwerk GmbH Updated: 01/10/2005

## 1. Order

Only written orders and agreements are legally binding for us. Agreements made orally and by phone require written confirmation in order to be valid. Our Conditions of Purchase shall be decisive on all accounts. We shall only be bound by deviating or conflicting conditions of the supplier's if we have explicitly agreed to these in writing. If the order is performed completely or partially by the supplier, our conditions shall be considered implicitly as fully acknowledged by him as regards their contents.

## 2. Acceptance of order

Our order shall be acknowledged immediately stating price and delivery period, also if the goods are shipped immediately.

## 3. Prices

Unless explicitly stipulated otherwise, the prices agreed shall be fixed prices. Without our consent, price increases shall be admissible only to the extent that legal provisions determine such increase explicitly and with immediate effect regarding existing contracts.

## 4. Delivery time

If the stipulated delivery periods are exceeded, and after having issued a notice of default, granting a reasonable period of grace, we shall be entitled to rescind the contract if the period of grace is not complied with. The additional costs arising from the covering purchase will be charged to the supplier.

Should the delivery period be exceeded due to force majeure or by changes caused or performed by us, they shall be communicated to us immediately in writing.

In case the extension of the delivery period is well-founded, the new delivery date shall be agreed in writing. If the notification is not effected in time or if the delivery period is exceeded without this being justified, the supplier shall not be entitled to extend the delivery period.

If the delivery date is not observed repeatedly, we shall be entitled to rescind the contract without granting a period of grace, to the extent the contract is not yet performed, even if we have previously accepted a delayed part delivery without reservation.

## 5. Acceptance

Force majeure and all the other events resulting in a restriction or suspension of our operations, such as war, riots, restraint and other regulatory measures, strikes, lock-outs, shortage of labour, fire damage, natural catastrophes, traffic disturbances, insufficient provision of railway wagons, extraordinary market changes etc. shall entitle us to delay acceptance or rescind the contract. They shall not give rise to claims for damages.

## 6. Packaging

The packaging is included in the price, unless provided by us and unless explicitly specified otherwise. If packaging is invoiced, it shall be returned - unless explicitly agreed otherwise - free of charge at the supplier's sole risk at our discretion.

## 7. Shipment

Shipment shall be effected at the supplier's risk.

The shipping address specified by us and the order number shall be indicated in all appropriate letters, despatch notes, consignment notes, parcel addressing, invoices etc.

If the goods in question are delivered in tank wagons or private wagons provided by or leased by us, any cargo preference granted shall be due to us, even if the supplier has advanced the freight costs for us or has to pay them himself.

## 8. Despatch note

It shall be sent in duplicate stating the order number, the precise contents in terms of units, dimensions and weight etc. at the date of shipment of the goods. It must be posted in sufficient time to arrive at our premises prior to receipt of the consignment. Packing slips and invoices shall not be considered as despatch notes.

## 9. Receipt of goods

When the goods are delivered to our "Goods received department", the consignment must be accompanied by a delivery note.

## 10. Invoices

All invoices shall be submitted to us in duplicate immediately on shipment of the goods.

Each daily delivery shall be stated separately in the invoices.

The quantities, numbers and contents determined by us shall be decisive for invoicing and payment.

## 11. Rescission from the contract

If the delivery does not correspond to the agreements made or - in the absence of specific determinations - to the normal commercial conditions, we shall be entitled to rescind the order immediately. Any additional costs arising from the covering purchase shall be borne by the supplier.

## 12. Defects

Our regulations concerning the technical, chemical and physical quality, dimensions, quality grade, type of execution and completeness shall be complied with precisely. In case of differences in weight, we shall only acknowledge the weights determined by the weighing operators certified in terms of the interests of the railway company. If a shipment is faulty or does not comply with the agreements made, we shall inform the supplier as soon as possible without, however, committing ourselves to a specific deadline. This applies especially to complaints which cannot be ascertained until the material is used at a later date. We reserve the right, after having informed the supplier, to perform ourselves any rework at his costs or to return the shipment and to demand new delivery or repair. If a defect cannot be detected before processing or machining or commissioning, we shall be entitled to demand replacement also for the work effected without result. Goods that are faulty or not in conformity with the order shall be returned at the supplier's charge and risk.

## 13. Warranty

The supplier shall warrant for his deliveries or services for the period of one year after commissioning or utilization, if applicable upon elimination of any reported defects, that the goods delivered are free of defects impeding their use or operation and have the properties specified by the supplier.

The repairs or replacements required accordingly shall be performed immediately and free of charge.

The supplier further warrants that his deliveries satisfy the requirements of the safety at work and accident prevention regulations, that especially the protective equipment required according to these is supplied even if single parts required for correct operation are not specifically mentioned in these order documents.

Warranty periods shall comply with the legal regulations.

## 14. Payment

Unless specifically agreed otherwise, invoices shall be paid within 14 days after delivery or receipt of the invoice less 2% discount or after 30 days without deduction at our choice, if we have been able to verify by that date that the quality of the shipment complies with the appropriate conditions.

We reserve the right to pay by acceptance, in which case discount charges shall be at our charge as of the 31<sup>st</sup> day after receipt of the invoice.

Should we be informed after conclusion of the contract and prior to the expiry of the warranty period about circumstances which are suitable to seriously doubt the creditworthiness of the supplier, we shall be entitled to withhold 10% of the order sum to safeguard our warranty claims. The 10% shall be paid if the goods supplied are in the contractually agreed condition upon expiry of the warranty period.

## 15. Patents

The supplier warrants that patents and industrial property rights are not infringed upon on performance of the order.

## 16. Drawings

The required number of drawings and structural analyses shall be submitted free of charge, if requested by us.

The drawings provided by us remain our property and must not be used subsequently by the supplier without our explicit written approval, nor reproduced, nor made available to third parties. Excerpts and the manufacture of individual parts for the account of others shall also be inadmissible.

## 17. Assignment

Claims towards us which result from the order may only be assigned to third parties with our explicit consent.

## 18. Subcontracting

Subcontracting part or all of the order to third parties shall only be admissible with our previous consent.

## 19. Misuse of orders

Any issued orders must not be used for promotional purposes. They must not be used to represent the supplier's business processes in reports and publications.

## 20. Order monitoring

In case of major delivery orders we reserve the right to dispatch from time to time one of our agents to the manufacturer's or supplier's factory in order to personally verify the status and progress as well as the handling of the order. That person shall be provided with any appropriate information.

## 21. Place of performance and venue

The place of performance shall be our factory in Gehren; legal venue shall be Meiningen.

## 22. Legal regulations

To the extent that these conditions do not provide for any regulations, the statutory provisions and normal commercial conditions shall apply.

## 23. General

We would like to point out that the personal data obtained regarding or in conjunction with our business relationship shall be processed in terms of the Federal Data Protection Act (BDSG).