



Berco S.p.A. General Terms and Conditions of Purchase

1. Purchaser's terms and conditions of purchase contained herein ("Purchaser's Conditions") shall apply exclusively to any purchase by Berco S.p.A. ("Berco" or "Purchaser") of any product. Supplier's terms and conditions which deviate from Purchaser's Conditions shall not apply unless Purchaser expressly consents to their application in writing.
 2. Purchaser's Conditions shall also exclusively apply even if Supplier has its general conditions of sale and said general conditions of sale are not expressly accepted by Purchaser.
- I. Purchase orders**
1. Purchase orders shall be binding only if they are placed by Purchaser in text form. Verbal agreements – including subsequent amendments and additions to these Purchaser's Conditions – must be confirmed in text form by Purchaser in order to become valid.
 2. Quotes/offers shall be prepared free of charge to Purchaser and do not bind Purchaser. For the period of their validity, Supplier's cost estimates shall form a binding basis for resultant orders. They shall not be remunerated unless expressly agreed otherwise.
 3. Documents used by Supplier in business dealings with Purchaser shall indicate at least: purchase order number, commission order number, plant, place of delivery/receipt, full article text/item description, volumes and volume units as well as VAT ID (for imports from the EU).
- II. Prices**
1. The prices of the products are fixed prices and they are not subject to increases for any reason including, but not limited to, increases in raw material or component costs, labour costs, or overhead costs. They are inclusive of everything Supplier has to do to fulfill in whole the supply obligation.
- III. Scope of supply**
1. As part of the scope of supply:
 - Supplier shall transfer to Purchaser ownership and possession of all technical documents (also for subcontractors) and other documents needed for manufacture, maintenance and operation. Said technical documents shall be in English or in Italian and shall be based on the international SI standard system;
 - Supplier shall provide the supply in a way that no intellectual property rights or copyrights of third parties are breached;
 - Supplier shall transfer all rights of use needed for the use of the supplies by Purchaser or third parties taking into consideration any patents, supplementary protection certificates, brands, registered designs;
 - Purchaser shall have the unconditional authority to carry out or have carried out by third parties repairs and modifications to the supplies and also to manufacture spare parts or have them manufactured by third parties.
 2. In the event the Supplier intends to deviate from the agreed scope of the supplies, the Supplier is entitled to request additional payments or changes to agreed dates only if these deviations and changes have been prior agreed in writing between the parties. Any change and/or amendment to any purchase order accepted by the Supplier or to be considered accepted by the Supplier, shall be valid and binding only if agreed in writing by the parties.
 3. The ordered volumes are binding. In the event of excess supplies, Purchaser shall be entitled to refuse these at the expense and cost of Supplier.
- IV. Quality**
1. Supplier shall introduce and maintain a state-of-the-art, documented quality system which has to meet the requirements of the international undercarriage industry. Supplier shall prepare records, in particular of quality inspections, and make these available to Purchaser on request.
 2. Supplier hereby agrees to quality audits being carried out by Purchaser or Purchaser's representative to assess said quality system.
- V. Supply period/deadlines**
1. Agreed delivery dates are binding. Supplies provided before the agreed delivery dates shall entitle Purchaser to refuse supply until it is due.
 2. If Supplier becomes aware that an agreed deadline cannot be met, he must inform Purchaser in text form immediately without delay, stating the reasons and the expected duration of the delay. In the event that agreed deadlines are not met, Italian law statutory provisions shall apply. In particular, Purchaser shall be entitled, after the futile expiration of a reasonable extension granted by Purchaser to terminate the concluded contract and to claim damages in lieu of performance or to claim damages in addition to the performance. Without prejudice to the aforesaid and to the other remedies provided by the concluded agreements and/or by the law, unless otherwise agreed, in case of any delay in delivery for reasons attributable to Supplier, Supplier shall pay Purchaser a penalty equivalent to 0.3 % of the purchase price for each commenced week of delay, up to the aggregate maximum of 5%, of the purchase price, without any prejudice for the Purchaser to claim compensation of the possible additional damages suffered as a consequence of the Supplier's delay. This penalty shall be immediately payable and collectable upon written notice given by the Purchaser to the Supplier. If Purchaser names and Supplier accepts, a specific vessel for the shipment of the goods, Supplier shall, in any case, bear all charges for demurrage, dead freight, etc., if the goods are for whatever reason shipped not at all or late.
 3. Acceptance without reserve of the delayed supplies may not be construed as waiver of any right or claim to which Purchaser is entitled.
 4. The Supplier has to indemnify and hold harmless the Purchaser for any damages and contract penalties which the Purchaser owes to any third party due to delay of the Supplier.
 5. If in cases of force majeure, strike or lockout, performance of contractual obligations is frustrated or materially impeded, Purchaser may cancel the contract wholly or in part or demand that the contract be performed at a later date, without entitling Supplier to any claims against Purchaser.
 6. Supplier may only claim the non-receipt of any documents Purchaser is obligated to furnish if he has not received them even a written reminder.
- VI. Delivery/performance and storage**
1. In case Supplier and Purchaser agree on the application of the "Incoterms" of the International Chamber of Commerce (ICC), the currently valid version thereof shall apply. However, they shall apply only insofar as they do not contradict the provisions of these Purchaser's Conditions and other concluded agreements. Unless otherwise agreed in text form, the supply shall be delivered duty paid (Incoterms: DDP) to the place of delivery indicated in the purchase order.
 2. Products must be shipped to the addresses indicated in the purchase order. Delivery to a place of receipt other than that designated in the purchase order shall not cause a transfer of risk from Supplier to Purchaser even if at said place of receipt delivery is accepted. Supplier shall bear the additional costs of Purchaser resulting from a delivery to an address different from the agreed place of receipt.
3. Partial supplies are not permitted unless Purchaser has expressly consented thereto in writing. Partial supplies are to be marked as such, delivery notes shall be submitted in triplicate.
 4. If weighing is necessary, the weight determined on the calibrated scales of Purchaser shall apply.
 5. To the extent Supplier has the right to request return of the packaging for shipment, such request shall be clearly marked on the delivery documents. In the absence of such marking, Purchaser shall dispose of the packaging at the cost of Supplier and Supplier shall not be entitled to request return of the packaging.
 6. Items needed for the fulfillment of an order may, after written approval of Purchaser, be stored on the premises of Purchaser in allocated storage areas only. For such items Supplier shall bear the full responsibility and risk.
 7. During transportation all applicable statutory provisions, in particular the provisions of the law on the transportation of hazardous goods and the applicable hazardous goods directives including the respective annexes and appendices, must be complied with by Supplier.
 8. The declaration of the goods in the consignment notes for shipment by rail shall comply with the applicable provisions of the railways. Costs and damages incurred due to incorrect declaration or failure to declare shall be borne by Supplier.
 9. Supplier shall have the receipt of deliveries confirmed in text form by the indicated place of receipt.
 10. Unless Supplier and Purchaser agreed in writing differently, Supplier shall bear the risk of accidental loss and deterioration until the goods are physically delivered at the place of destination; this includes shipments "delivered free" and "free place of destination".
- VII. Reservation of title and ownership**
1. The ownership of the supplied products shall be transferred upon delivery to the address indicated in the purchase order. No retention of ownership in favour of Supplier shall apply.
 2. In the event that the Parties expressly agree that the products are sold with the retention of title, the ownership of the products shall be transferred when the purchase price is paid. Even if Supplier delivered under the retention of title, Supplier may not claim return of the goods unless Supplier has terminated the contract.
- VIII. Declarations of origin**
1. In the event that the Supplier makes declarations regarding the originating status of the goods sold, the following shall apply:
 - a) Supplier undertakes to enable the customs administration to verify proofs of origin and to provide the necessary information as well as any necessary confirmations.
 - b) Supplier shall be obliged to compensate for any damage resulting from the declared origin not being recognized by the competent authority as a result of incorrect certification or the impossibility of verification, unless he is not responsible for these consequences.
 - c) Supplier shall at his own costs and without undue delay make sure that all documents required for the effectiveness of the order and the delivery of the products to Purchaser, e.g. export approvals, are on hand and remain valid during the time of the order execution. If Supplier fails to fulfil this obligation, Purchaser shall be entitled to terminate the contract pursuant to article 1456 of the Italian Civil Code and in any case to claim damages from Supplier. The same shall apply in the event that for example, despite Supplier's efforts the required approvals are not granted within a period reasonable for Purchaser or are withdrawn or become invalid during the execution of the contract
- IX. Execution, Sub-contractors, Assignment**
1. Supplier shall not be entitled to transfer or assign the purchase order and/or the concluded contract in whole or in part - or any right or obligation arising therefrom - to third parties without Purchaser's prior written consent.
 2. Supplier is obliged to name his subcontractors to Purchaser on request. In any case, Supplier is not entitled to subcontract any activity necessary for the fulfillment of its obligation vis-à-vis the Purchaser, to third parties without the prior written approval of the Purchaser.
 3. Supplier shall not be entitled to assign his contractual claims vis-à-vis Purchaser to third parties or permit third parties to collect the same.
- X. Termination**
1. Purchaser is entitled to withdraw from the concluded contract in full or in part, by giving 30 days prior notice to Supplier. In such an event, Purchaser is obligated exclusively to pay for all supplies rendered up to then and to refund the Supplier with the relevant costs for raw material and/or adequately remunerate work-in-progress products. Further claims, of any nature, of Supplier are expressly excluded.
 2. Purchaser is also entitled to withdraw from the contract, without notice period, if (a) a request to start an insolvency procedure, including, by way of example only and without limitation, composition with creditors ("concordato preventivo"), is filed with any competent court, by the Supplier or by any third party; or (b) in case the Supplier achieves a debt restructuring agreement ("Accordo di ristrutturazione dei debiti") or a certified rescue plan ("Piano attestato di risanamento").
 3. In case an insolvency proceeding is activated against the Supplier, the Purchaser shall have the right to acquire material and/or semi-finished products, including any special equipment, worked by the Supplier and not yet completed before the beginning of the insolvency proceeding, on reasonable terms and conditions.
- XI. Invoicing, payment, setting-off**
1. Payment shall be made as agreed. Any delivery executed before the agreed date shall not affect the payment period tied to this delivery date.
 2. Purchaser is entitled to set off against all claims to which the Supplier is entitled against the Purchaser or any other company of the thyssenkrupp group, irrespective of the legal grounds, even if said claims are not yet due and provided that the other companies of the thyssenkrupp group have assigned to Purchaser their claims against the Supplier or granted to Purchaser the relevant mandate to collect the claims. This also applies if cash payment has been agreed by one party and payment by bill of exchange or other services on account of performance by the other party.
 3. An invoice issued in accordance with applicable statutory Italian law is a prerequisite for payment.

XII. Claims under liability for defects and Product Liability

- In addition to any other warranty provided by the applicable law provisions, Supplier represents that his products (i) are free from any defect, (ii) have the agreed requirements and (iii) fulfill the intended purpose (points (i), (ii) and (iii) jointly "Defect") during the warranty period indicated below. The Supplier is free – after consultation with Purchaser, in compliance with any possible non-disclosure agreement, and to the extent the Purchaser is actually and legally able to do so – to examine the intended purpose of use (in particular the final products) - together with Purchaser - at Purchaser's or at a location named by Purchaser. In the event that Purchaser incurs costs such as transport/travel, working and material costs or contractual penalties as a consequence of defective supplies, Supplier shall bear entirely said costs.
- The warranty period provided in clause 3 of this Section XII shall begin with the full supply of the scope of supply or, if acceptance is agreed, on acceptance.
- The warranty period for Defects provided in clause 1 of this Section XII is 36 months ("Warranty Period"); longer statutory limitation periods, if any, shall remain unaffected by the Warranty Period. For newly supplied or repaired parts, the Warranty Period starts anew. Purchaser shall not be obliged to perform any incoming goods inspection that goes beyond the extent described below. In consideration of Supplier's inspections pursuant to the Quality System as described in Sec. IV. Purchaser shall inspect the delivered goods only as regards their identity (on the basis of the information provided in the delivery note), the number of units delivered and any transport damage which is clearly externally visible on the transport packaging, without performing any individual checks. Purchaser shall notify Supplier of any Defects which he discovers in the ordinary course of business within 10 months from the delivery. No further obligations shall exist in this respect.
- All Defects which are notified within the Warranty Period shall be remedied by the Supplier either by supplying replacements or rectifying the goods without delay and at no costs for Purchaser. The costs of rectifying goods or supplying replacements, including all incidental costs (e.g. freight) shall be borne and indemnified by Supplier. The costs and expenses incurred by Purchaser's customers shall also be compensated and indemnified by Supplier. In addition to any rights Purchaser may have under any contract, Purchaser's Conditions or applicable law, in case of a Defect, Purchaser shall be entitled to charge Supplier a handling fee of 500€ per Quality Notification. If Supplier culpably fails to immediately begin remedying the defect or carry out the delivery in accordance with the contract, Purchaser is entitled to carry out the necessary measures himself or have the same carried out by third parties at the expenses and risk of Supplier. If there is an urgent case in which it is no longer possible due to the particular urgency to inform the Supplier of the Defect and the impending damage and to set him a deadline for his own remedy, the Purchaser shall also be entitled to rectify/have rectified the defects himself or to procure replacement at the Supplier's expense. This shall not affect statutory rights of withdrawal, termination, purchase price reduction or compensation for damages and any other applicable right.
- In the event of defects of title, Supplier shall hold Purchaser harmless from any claims arising from third parties. Supplier shall indemnify, defend and hold harmless Purchaser from all liabilities, costs, damages, claims and expenses (including any legal costs and fees), incurred by Purchaser in respect of any claim and/or action brought by any third party against Purchaser because the supply of Supplier or its use by Purchaser or its customers infringe intellectual property rights or copyrights of a third party.
- Supplier is liable for measures to prevent damage (e.g. recall or customer service action) and other field measures to the extent this measure is based on the defectiveness of Supplier's delivery or any other breach of contract or duty by the Supplier.
- On account of performance of his contractual obligations, upon Purchaser's request, Supplier shall assign to Purchaser any and all claims to which he is entitled against his pre-suppliers in connection with the delivery of defective goods. Supplier shall duly furnish Purchaser with all documents required by Purchaser itself to assert any such claims.

XIII. Place of fulfillment, legal venue

- Place of fulfillment for all supplies shall be the place of receipt indicated by Purchaser.
- The Parties agree that any dispute arising out of or in connection with these Purchaser's Conditions and/or the concluded contract and any contract and documents to which these Purchaser's Conditions apply, including any question regarding its interpretation, existence, validity or termination as well the sale of any product will be submitted to the exclusive jurisdiction of the Italian Court and to the exclusive competence of the court of Ferrara (Italy).

XIV. Applicable law

- These Purchaser's Conditions and any contract and documents to which these Purchaser's Conditions apply shall be exclusively governed by the laws of Italy time by time applicable, without regard to conflict of law provision. The Parties hereby expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Law on the Sale of Goods and the Uniform Law on the Formation of Contracts for the International Sale of Goods as well as any other international treaty or laws related to the conflict of laws.

XV. Prohibition of advertising/secretcy

- The use of Purchaser's inquiries, purchase orders and related correspondence for advertising purposes requires Purchaser's express prior consent in text form.
- Supplier shall maintain secrecy vis-à-vis third parties in respect of all operational events, facilities, plants, documents etc. used at Purchaser's premises or those of his customers which become known to Supplier in connection with his activities for Purchaser, also after submission of the corresponding offers and after completion of the contract. Supplier shall impose corresponding obligations on his vicarious agents.

XVI. Severability

- Should individual provisions of the Purchaser's Conditions become entirely or partly invalid, the remaining provisions shall remain valid. The same shall apply for the corresponding concluded contract.

XVII. Data protection

- The Parties acknowledge that personal information relating to Supplier and Purchaser and their respective employees may be processed in connection with the concluded agreements.
- The information shall be processed manually and digitally by the personnel employed by Supplier and by Purchaser, for the sole purposes of the contract and for all the related legal obligations.
- The information shall be processed in full accordance with the applicable laws and with respect for all the rights of the data subjects as granted by current legislation.

XVIII. REACH clause

- Supplier must fulfill all specifications and measures resulting from the REACH directive for all materials, prepared materials and products supplied/provided to Purchaser.

XIX. Code of Conduct and 231 Model

- Il Fornitore prende atto e accetta come vincolanti le disposizioni del Codice di Condotta di Supplier acknowledges and accepts the provisions of the Code of Conduct of thyssenkrupp, as in force from time to time, as authoritative.
- Supplier declares to be aware of and to promptly comply with, and require its employees and/or collaborators to promptly comply with, the provisions of the model of organization and management ("Model 231") and of the ethical code implemented by Purchaser pursuant to Legislative Decree no. 231/2001 ("Ethical Code"). Supplier declares to have received copy of the Model 231 and of the Ethical Code.
- The Parties agree that:
 - the breach and/or non-compliance, by Supplier, even only partially and even only of one of its obligations under Article 1 of this Section XIX; and/or
 - the commission, of one or more crimes referred to in Legislative Decree no. 231/2001 by Supplier and/or by one of his directors, employees, consultant, or collaborators at any title, with or without the application of temporary or definitive disqualifications measures; are considered material breach of the obligations regulated by these Purchaser's Conditions and/or by the concluded contract. Consequently, the Purchaser will be entitled:
 - to suspend the execution of any concluded contract; and/or
 - to terminate any concluded contract pursuant to article 1456 of the Italian Civil Code, giving notice by registered mail with return receipt or overnight courier; and
 - Purchaser itself will be entitled to request and obtain compensation for all damages, including indirect damages, suffered.

XX. Minimum labor conditions

- Supplier undertakes to pay his personnel and subcontractors or persons providing temporary staff at a rate not less than that stipulated in the applicable collective bargaining agreements, and shall scrupulously observe all the social security, insurance, welfare, accident prevention and fiscal obligations (including the payment of taxes and VAT, and all the legal withholding taxes) deriving from the applicable laws and regulations. Supplier undertakes to provide Purchaser, without undue delay, with all documentation proving effective fulfillment of the obligations contained in this Section XX, and therefore by way of non-limiting example, with a copy of the certificate of up-to-date contributions "DURC" (or equivalent document for non-Italian Suppliers). Supplier must not circumvent the afore-mentioned laws.
- Supplier shall indemnify and hold harmless Purchaser from any third party claims and obligations vis-à-vis third parties resulting from a breach of the afore-mentioned laws by him or any subcontractor / person providing temporary staff. In case of a breach of this Sec. XX. Purchaser shall also be entitled to terminate the agreement with Supplier for good cause without observance of any notice period, pursuant to article 1456 of the Italian Civil Code.
- Supplier shall, in fulfillment of his contractual obligations vis-à-vis the Purchaser, engage non EU employees only to the extent such employees have valid work permits (residence permits), and shall oblige any subcontractor to also comply with this requirement. Upon request, Supplier shall provide without undue delay written evidence demonstration compliance with obligations contained in this Section XX by himself and any subcontractor.
- The Supplier undertakes, pursuant to article 1381 of the Italian Civil Code, to cause any subcontractors to fulfil the obligations of this Section XX.

As of: July 2018