
General terms and conditions of purchase Tsubakimoto Europe B.V.**1. Definitions**

"Buyer" means the entity identified on the Purchase order sent by Tsubaki Europe Purchase Department.

"Seller" means the vendor identified on the face of this Purchase Order.

"Terms and Conditions" means the information on the face of the Purchase Order and these Purchase Order Terms and Conditions, and any other terms and conditions, specifications, drawings, or other documents specifically incorporated into the Purchase Order by reference.

2. Agreement

The Agreement, the Purchase Order and these Terms and Conditions contain the complete and exclusive agreement between the Buyer and Seller, are the only terms upon which the Buyer is willing to contract with Seller, and supersede all prior negotiations or agreements, whether written or oral. No modification, amendment, extension, renewal, revision, discharge, abandonment, waiver or other change or alteration shall be valid, enforceable, or binding on the Buyer unless agreed to in a subsequent writing signed by an authorized representative of Buyer. All terms and conditions proposed by the Seller which are different from or in addition to the Purchase Order and these Terms and Conditions are expressly rejected. Seller's written acceptance of the Purchase Order, shipment of any equipment, goods or materials, commencement of any work, or performance of any labour or services hereunder constitutes Seller's acceptance of this Purchase Order subject to these Terms and Conditions..

3. Order confirmations

The Seller is obligated to e-mail a written order confirmation to the Buyer within a maximum of 5 working days. Exception occurs when the Buyer request for a drawing for approval. In this case the Seller is obligated to send the order confirmation within 5 working days after the approval of the drawing by the engineering department of the Buyer. The order confirmation of the customer should contain: price, currency, quantity, delivery date, incoterms. In cases of special packaging or other relevant remarks, it needs to be enclosed on the order confirmation. Unless the Seller explicitly rejects an order, the Seller shall be deemed to have accepted the order.

4. Deliveries

4.1 Time is of the essence in connection with Seller's performance under the Purchase Order. If delivery of materials or equipment is not completed by the time prescribed herein, the Buyer may call for expedited shipment and the Seller will be responsible for any extra costs. In addition to its other rights and remedies, the Buyer shall also have the right without any obligation to the Seller to terminate the Purchase Order if not completed timely or as specified, or, without any advanced notice to Seller, to provide or procure any goods, materials or services as may be necessary in Buyer's discretion, to complete Seller's work under the Purchase Order and deduct the cost thereof, including expenses such as for transport, plus 10% of the total of such cost from any monies then due or thereafter to become due to the Seller under the Purchase Order.

4.2 By written notice to Seller, the Buyer may suspend delivery of any equipment, goods, materials or other performance required under the Purchase Order. The Seller shall hold the equipment, goods, materials, or other performance in accordance with Buyer's written instructions and shall deliver them or resume performance when notified by Buyer. In such event the Buyer shall pay as sole and complete compensation Seller's actual additional direct expenses in holding the equipment, goods, materials, or other performance. Title to and risk of loss with respect to products, materials, and equipment described in the Purchase Order shall pass to the Buyer upon delivery to Buyer's location, unless otherwise provided in writing by Buyer.

5. Packaging/Marking

Packaging shall be either retail trade or as specified in the Purchase Order. Small items shall be boxed or palletized. All large items, e.g., long lengths of steel, shall be banded securely together. No charge will be allowed for packing, boxing, palletizing, etc. unless expressly stated in the Purchase Order. Buyer's Order Number and, where applicable, the Buyer's Part Numbers must appear on all Packages, Packing Slips, Bills of Lading, and Invoices. Packing Slips must accompany each shipment. No valuation is to be declared on any shipments other than that which may be required by Dutch Customs from foreign sellers. The Seller must e-mail the Bill of Lading and Packing Slip and invoice, for each shipment upon receipt from the freight forwarder. Forwarding to the attention of the Buyer's purchasing and logistics department purchase@tsubaki.eu; logistics@tsubaki.eu. Copies of the original paid freight bill must accompany charges for prepaid freight. Invoices shall be issued showing VAT number on each copy of invoice.

6. Inspection/Acceptance

Upon delivery, all equipment, goods, materials or work or any part thereof shall be subject to inspection by the Buyer for a reasonable period (which shall in no event be less than 30 days after receipt by Buyer) provided that the Buyer may also reject the equipment, goods, materials or work and hold the Seller in default if, at any time after the Buyer has inspected the equipment, goods, materials or work, the Buyer discovers a defect not normally discoverable by visual inspection or if the defect becomes apparent after the equipment, goods, materials or work are used or integrated into a system. Payment shall not constitute a waiver of Buyer's rights to inspect or reject the equipment, goods, materials, or work. All equipment, goods, materials, or work rejected by the Buyer shall be returned to the Seller at Seller's expense and shall not be replaced except upon written instructions from Buyer. The Seller shall not have the right to substitute a conforming tender without the prior written approval of Buyer.

7. Termination for convenience

The Buyer may at any time terminate all or any part of the Purchase Order for its sole convenience, and the Seller shall immediately stop all work hereunder, cause any of its suppliers or subcontractors to cease such work and take all other necessary steps to minimize its costs hereunder. The Seller shall deliver completed equipment, goods, materials, and work in progress in accordance with Buyer's instructions. Provided such termination is for any reason other than described in Paragraph 4 and 8, the Buyer shall pay the Seller as sole and complete compensation: (a) a percentage of the Purchase Order price equal to the percentage of the work performed in conformity with the Purchase Order; plus (b) Seller's reasonable direct expenses resulting from such termination.

8. Termination for cause

The Buyer may also terminate all or any part of the Purchase Order for cause in the event of any default, including but not limited to: (a) Seller's failure to comply with any of the Terms and Conditions of the Purchase Order; (b) Seller's failure to give Buyer, upon request, reasonable assurances of Seller's future performance; (c) insolvency, bankruptcy, liquidation or dissolution of Seller; or (d) any other event which causes reasonable doubt as to Seller's ability to render due performance hereunder. In the event of termination for cause, the Seller shall be liable to the Buyer for all damages sustained by reason of such default.

9. Confidential and proprietary information

9.1 The Seller shall hold all information furnished by the Buyer in confidence and shall not disclose any such information to any other person other than Seller's staff with a need to know or use such information itself for any purpose other than performing the Purchase Order without prior written consent from Buyer.

9.2 The restrictions contained in this paragraph shall apply to drawings, specifications, technical know-how, software object code and source code, protocols, strategic business plans, financial information, product information, marketing information, methods of operation, customer information, supplier information, compilations of data, and all other documents and information communicated to the Seller or learned by the Seller in connection with this Purchase Order and to drawings, specifications and other documents prepared by the Seller for the Buyer in connection with this Purchase Order.

- 9.3 Upon request from the Buyer, the Seller shall, without delay, at the election of the Buyer, either destroy or return to the Buyer all information and materials furnished by the Buyer under this Purchase Order or pursuant to any other agreement between the parties, and any copies thereof, including, without limitation, all drawings, specifications, and related documents. The obligation of confidentiality herein shall continue after termination of the Purchase Order and Agreement.
- 9.4 The Seller grants to the Buyer a nonexclusive, paid-up, irrevocable licence to copy, distribute, transfer or otherwise use all copyrighted drawings, specifications, catalogue descriptions or other materials of the Seller which are furnished to the Buyer under the Purchase Order.
- 10. Equipment**
- 10.1 All materials, including tools, special dies, patterns, and fixtures furnished or specifically paid for by the Buyer shall be: (a) the property of the Buyer; (b) without delay returned to the Buyer when so instructed by the Buyer; (c) used only for the Buyer's requirements of this Purchase Order or as instructed by the Buyer; and (d) segregated and clearly identified as property of the Buyer.
- 10.2 The Seller assumes all storage costs and assumes all risk and liability for loss and damage thereto, except for normal wear, and agrees to permit inspection and supply detailed statements of inventory upon request of the Buyer.
- 11. Intellectual property/Licence to repair**
- 11.1 The Seller warrants to the Buyer that it is the owner or licensee of all patents, copyrights and other intellectual property embodied in or furnished as part of the Seller's performance of the Purchase Order. The Seller agrees to defend, hold harmless, and indemnify the Buyer and its customers against all claims, demands, losses, suits, damages, liability and expenses (including licence fees and attorneys' fees) arising out of any suit or claim or action for actual or alleged direct or contributory infringement of, or inducement to infringe, any Dutch or foreign patent, trademark, copyright or mask work right by reason of the manufacture, use or sale of the goods or services to be furnished or performed under the Purchase Order, or for the actual or alleged misuse or misappropriation of a trade secret resulting from the Seller's actions.
- 11.2 The Seller agrees that all discoveries, designs, inventions, improvements and other intellectual property rights whether copyrightable, patentable or not which are written, conceived, discovered or made by the Seller's employees or subcontractors in the performance of the Purchase Order shall be promptly disclosed to the Buyer and shall become the Buyer's sole property. The Seller further agrees to sign and execute all assignments and other papers necessary to vest the entire right, title and interest in such discoveries, designs, inventions, improvements and other intellectual property to the Buyer and do all other lawful acts the Buyer may reasonably request relating to such intellectual property rights.
- 11.3 The Seller grants the Buyer a nonexclusive, irrevocable licence to repair, rebuild and relocate the equipment or goods furnished under the Purchase Order.
- 12. Warranty**
- 12.1 The Seller warrants that all equipment, goods, materials, labour, or services furnished hereunder shall conform to the Terms and Conditions of the Purchase Order and the Agreement if applicable, and any descriptions or samples which may have been furnished by the Seller. The Seller further warrants that all equipment, goods or materials furnished hereunder shall be: (a) new and free from defects in design, material and workmanship; (b) free from any lien or security interest; (c) merchantable and of the highest quality; and (d) fit for the purpose intended.
- 12.2 It is understood that the Buyer may extend this warranty to the end-user, and Seller's warranty shall remain in effect if the Buyer's warranty to its end-user remains in effect. The end-user shall be entitled to all rights and remedies of the Buyer under the Purchase Order as if a party to it. In the event of the Seller's breach of any of the foregoing warranties, the Buyer may, at its election and in addition to any other rights or remedies it may have in law or equity or under the Purchase Order, recover from the Seller all of its costs, losses or damages resulting from such breach (including labour costs associated with the diagnosis and correction of any defect or unfitness) and: (a) return the equipment, goods or materials at the Seller's expense and recover from the Seller the price paid and, if elected by the Buyer, purchase or manufacture similar equipment, goods or materials and recover from the Seller the costs and expenses thereof;

- (b) accept or retain the equipment, goods or materials and equitably reduce their price; or (c) require the Seller, at its expense, to promptly replace or correct the equipment, goods, materials, labour, or services and, pending redelivery, to repay to the Buyer any amount previously paid for such equipment, goods, materials, labour, or services.
- 12.3 If the Seller fails to promptly replace or correct such equipment, goods, materials, labour, or services as directed by the Buyer, the Buyer may repair them or have them repaired at the Seller's expense, or purchase or manufacture similar equipment, goods, materials, labour, or services and recover from the Seller the costs and expenses thereof.
- 13. Prices, taxes, and duties**
- 13.1 The Seller warrants that each price for equipment, goods, material, labour, or services furnished hereunder is no less favourable than that extended during the term of the Purchase Order to any other customer for the same or like items or services in equal or less quantities or similar terms and conditions. Unless otherwise provided on the face of the Purchase Order, the prices contained herein include all federal, provincial, and local taxes, customs, and duties. Where applicable, the Buyer shall provide the Seller with a tax exemption certificate acceptable to taxing authorities. If any of the items purchased hereunder are imported from any other country, the Seller is responsible for all legal, regulatory, and administrative requirements related to such importation.
- 14. Compliance with laws**
- The Seller shall comply with all applicable federal, provincial, and local laws, executive orders, rules, and regulations. The Seller agrees to indemnify and hold the Buyer and its customers harmless from and against any loss, damage or expense caused by the failure of the Seller, its employees, agents, subcontractors, or representatives to comply with any applicable law, order, rule, or regulation.
- 15. Assignment/Subcontracting**
- No part of the Purchase Order may be assigned or subcontracted without the prior written consent of the Buyer.
- 16. Setoff**
- Any claim by the Seller for money due or to become due from the Buyer shall be subject to deduction or set off by the Buyer for any counterclaim arising from the Purchase Order or any other transaction with the Seller. The Seller shall not be entitled to set-off any claims it may have against any claims of the Buyer without the Buyer's prior written consent.
- 17. Remedies/Waiver**
- The rights and remedies provided to the Buyer in the Purchase Order and Agreement shall be cumulative and additional to any other or further remedies provided in law or equity. The Buyer's failure to insist on performance of any of the Terms or Conditions contained in the Purchase Order or Agreement or to exercise any right or privilege or the Buyer's waiver of any breach hereunder shall not constitute a waiver of any other or subsequent right, privilege, or breach.
- 18. Applicable law and disputes**
- 18.1 These conditions and any pertaining agreements shall be solely governed by Dutch Law. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall apply unless otherwise agreed in the Purchase Order Terms, the Agreement or these Terms and Conditions.
- 18.2 The parties expressly agree that any disputes shall be submitted to the competent Dutch court, or at Buyer's election, decided in accordance with the most recent version of the Arbitration Rules of the Netherlands Arbitration Institute.
- 18.3 The Seller's general conditions, under whatever name or designation, shall be explicitly inapplicable.
- 18.4 These conditions have been filed in English.

19. Limitation of liability

In no event shall the Buyer be liable for incidental or consequential damages, including but not limited to loss of profits, loss of use of equipment, facilities, capital or money, whether such liability is grounded in contract, tort or any other cause whatsoever. The Seller must commence suit with respect to any claim arising out of or in connection with the Purchase Order within one (1) year after the cause of action occurred and before acceptance of final payment, failing which the Seller's claim is extinguished and fully and finally released by the Seller, and the Seller consents to a dismissal of any such claim or proceeding in a court or forum with costs.

20. Changes and alterations

20.1 No changes in quantity, price, requirements, terms, conditions, or delivery shall be made without the Buyer's specific written authorization. The Buyer shall have the right, by written order, to make changes to the Purchase Order, including changes to specifications, drawings, quantity, or time of delivery.

20.2 If the Seller claims that such changes require a change in price or time for performance, the Seller shall notify the Buyer in writing within 3 days of the occurrence of the event giving rise to the claim or prior to commencing the changed work (whichever occurs first). The Buyer's notice shall include sufficient documentation in support of the claim to enable the Buyer to evaluate its merits. Failure by the Seller to provide such notice shall constitute the Seller's acknowledgement that no equitable adjustment to price or time is justified. Pending resolution of any such claim, the Seller shall proceed with its work.

21. Language

Unless otherwise agreed, the Purchase Order as well as all other documents relating to it, including notices, is to be drawn up in English only.

22. Miscellaneous

These Terms and Conditions are binding on and inure to the benefit of the parties hereto and their respective successors and permitted assigns. If any provision contained herein is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and all other provisions shall remain in full force and effect. These Terms and Conditions shall survive the termination of the Purchase Order.