

Terms and Conditions of Purchase

Witzenmann Metal Products (Jiangyin) Co., Ltd

November 2019

WITZENMANN

Witzenmann Metal Products
Jiangyin Co. Ltd.

GENERAL

These Terms and Conditions of Purchase ("Terms and Conditions") shall govern and be incorporated in every contract, arrangement or understanding between Witzenmann Metal Products (Jiangyin) Co., Ltd ("Purchaser") and Seller ("Contract") for the supply of goods and/or services, as well as to the performance of works (collectively referred to as "Goods/Services"), pursuant to the purchase order (the "Purchase Order").

OFFER

An offer made by Seller, including an offer made without obligation, cannot be revoked after acceptance of such offer by Purchaser. A request for an offer from Seller by Purchaser is without obligation.

ACCEPTANCE OF PURCHASE ORDER

Acceptance of this Purchase Order is expressly limited to the terms stated herein. The applicability of any terms and condition printed on any quote, proposal, order acknowledgment, invoice or other document issued by Seller are hereby explicitly excluded. No variation of these Terms and Conditions shall be effective unless expressly accepted in writing by Purchaser. Seller's commencement of work on the Goods/Services subject to the Purchase Order, shipment of such Goods/Services, or acceptance of any payment by Purchaser, whichever occurs first, shall be deemed acceptance of the Purchase Order.

PRICE & PAYMENT

Seller shall furnish the Goods/Services called for by the Purchase Order at the price or prices stated herein; any increase in any stated price can only be accomplished through an amendment of the Purchase Order by Purchaser. The manner for payment, place of payment and currency shall be laid down in the Purchase Order and Purchaser shall pay Seller accordingly.

DUTIES, TAXES AND EXPENSES

The price laid down in the Contract and/or the Purchase Order shall be for delivery of the Goods/Services at a place stipulated by Purchaser and, unless otherwise agreed in writing, shall be inclusive of packaging, transport charges, insurance, duties, taxes and other delivery costs. Purchaser shall not be liable for any other costs and expenses relating to the Goods/Services unless separately stated on the Purchase Order and billed as a separate item.

SET-OFF

All claims for monies due or to become due from Purchaser shall be subject to deduction or set off by Purchaser by reason of any other amount arising out of this or any other transaction with Seller.

DELIVERY

Seller shall guarantee that the quality of the delivered Goods/Services is in conformance with the requirements of the Contract, as well as all safety requirements by law. Where the quality of the Goods/Services fails to meet the requirements of the Contract, Purchaser may, without prejudice to its any other rights, refuse to accept the Goods/Services. Deliveries of Goods/Services are to be made in quantities and at the time and place stipulated by Purchaser. Purchaser will have no liability to pay for Goods/Services delivered to Purchaser which are in excess of quantities specified in the Purchase Order. Overshipment of any Goods/Services shall, if so requested by Purchaser, be returned at Seller's risk and expense. Time and place of delivery are of the essence in the performance of the Contract and Purchase Order and Purchaser may terminate the relevant Contract and/or this Purchase Order if Seller fails to timely deliver the involved Goods/Services. Furthermore, in such a case, Seller undertakes to compensate Purchaser for all losses, damages and expenses so caused. Purchaser may change delivery dates or direct temporary suspension of scheduled shipments by giving two days notice in advance of shipment by the Seller.

PACKING AND SHIPPING

Unless otherwise agreed by both parties, all shipments must be made in accordance with specified shipping and routing instructions given by Purchaser at no additional cost to Purchaser, and Seller shall assume full responsibility for failure to comply with such instructions. All excess transportation expense incurred by Purchaser as a consequence of improper shipping or routing shall be borne by the Seller or reimbursed to the Purchaser as the case may be. No charges shall be allowed the Seller for boxing, crating, packing, cartage or trucking unless provided for herein or agreed to in writing by Purchaser. Seller shall be held liable for any loss or damage incurred in transit or delivery through improper boxing, crating, packing, cartage or trucking. Where containers or packaging are to be returned to Seller, this must be clearly stated on the transport documents or invoices, and the returning shall be at Seller's risk and expense unless otherwise agreed upon in writing. Purchaser reserves the right to return all packages to Seller.

OWNERSHIP AND RISK

Purchaser shall acquire ownership of the Goods in accordance with the provisions laid down in the Contract or Purchase Order. Trade terms (such as CIF and FOB) will be interpreted according to Incoterms 2010 as amended from time to time. In the absence of agreement, Purchaser shall acquire ownership of the Goods and bear the risks thereof from the moment of delivery. For the avoidance of doubt, in such a case, the moment of delivery shall be deemed to take place when the Goods are loaded on Purchaser's carrier or off-loaded by Seller and placed in a place designated by Purchaser.

PURCHASER PROPERTY

All special dies, molds, jigs, tools, etc., either supplied to Seller by Purchaser or paid for by Purchaser for the performance of the Contract and/or completion of Purchase Order shall remain the property of Purchaser and shall be kept by Seller in good order with repair, ordinary wear and tear excepted.

INSURANCE

Seller shall insure the Goods for their full value with a reputable insurance company until the moment of delivery. In the event that Seller's performance hereunder requires services by Seller's employees, to be done on Purchaser's property, Seller agrees that all such work shall be done as an independent contractor. In such circumstance, Seller shall purchase and maintain during the term of the Contract insurance (including without limitation to work-related injury insurance) providing coverage against any claim or liability that may arise from performance or work on Purchaser's property. Seller shall provide Purchaser certificates of insurance satisfactory to Purchaser evidencing the above coverage. Seller shall indemnify and save harmless and defend Purchaser from any and all claims or liabilities arising out of the services performed on Purchaser's property.

WARRANTIES

Seller warrants that all Goods/Services provided hereunder will (i) conform to applicable specifications, drawings, and samples; (ii) be merchantable, of good material and workmanship; (iii) free from any defect or defect; (iv) be fit and sufficient for the particular purpose intended; and (v) satisfy mandatory laws and regulations regarding, inter alia, health, safety and the environment, applicable in the People's Republic of China ("PRC") and any other country or region in which the Goods/Services are to be used if this country or region was communicated to Seller or was otherwise reasonably known to Seller. These warranties are in addition to all other warranties, express, implied or statutory. Payment for, use, inspection of, or acceptance of Goods/Services shall not constitute a waiver of any breach of warranty.

ACCEPTANCE OF GOODS/SERVICES

The Goods/Services are subject to inspection and testing by Purchaser. In the event that the Goods/Services are delivered in breach of the above warranties or found defective (whether the defect is patent or latent), Purchaser has the right to replace or repair such Goods/Services at the expense of the Seller within a reasonable period of time determined by Purchaser or reject and return such Goods/Services at all times at the expense and risk of Seller. Purchaser has the right to make such supplements, replacements or repairs itself, or to instruct a third party to do so, at Seller's expense, if the Goods/Services are required without delay or if Seller fails to supplement, repair or replace the Goods/Services within a reasonable period of time as stipulated by Purchaser. The making of any payment shall not prejudice Purchaser's rights hereunder.

LIABILITY AND INDEMNIFICATION

If Seller breaches the Contract, it shall pay damages to Purchaser for all losses that has been foreseen or ought to be foreseen when Seller enters into the Contract. If the damages are not sufficient to cover the losses incurred by Purchaser, Purchaser shall be entitled to other remedies available under applicable law. If Purchaser demands continued performance of the Contract, Seller shall continue to perform. Seller shall defend, indemnify and hold harmless Purchaser against all damages, claims or liabilities and expenses (including attorneys' fees) arising out of or resulting in any way from any defect in or breach of warranty for the Goods/Services purchased hereunder, or from any act or omission of Seller, its agents, employees or subcontractors. **To the extent permitted by law, in no event will purchaser be liable to seller for incidental, consequential, indirect, special or punitive damages (including interest of delayed payment, penalties, taxes or filing fees) or lost profits, regardless of whether such liability is based on breach of contract, tort, strict liability or otherwise, and even if advised of the likelihood of such damage.**

INTELLECTUAL PROPERTY

Seller warrants that the sale or use of the Goods/Services will not infringe any patent, trademark, copyright, model or other intellectual property right, and Seller agrees to indemnify, save harmless, and defend Purchaser, at Seller's cost, from all loss and liability, including claims for profits, by reason of any actual or alleged infringement by Purchaser or persons selling or using Purchaser's products, of any patent, trademark, copyright, model or other intellectual property right applicable to the use or sale of the Goods/Services provided hereunder.

CONFIDENTIAL INFORMATION

Subject to any non-disclosure agreement separately entered into between Purchaser and Seller regarding the sale of the Goods/Services, Seller agrees that (i) all material, knowledge and information, including without limitation to specifications, drawings, sketches, calculations, formulas, preparation methods, studies, samples, molds, dies and tools made available by Purchaser or produced or developed by Seller on the instructions of Purchaser in relation to this Purchase Order (hereinafter collectively referred to as "Confidential Information"), shall be treated as confidential and proprietary belonging to Purchaser, and are furnished under the express understanding that such material may not, in whole or in part, be disclosed to any other person or used for any purpose (including without limitation to application for patents) other than performing the Contract, without the prior written consent of Purchaser; (ii) Seller undertakes to impose the same obligations on any employees and third parties which obtain Confidential Information as required for the performance of the Contract and warrants that such employees and third parties will comply with such obligations; and (iii) all documents and materials containing Confidential Information, together with any copies and the like which have been produced, are to be returned in good condition to Purchaser at Seller's expense upon request or upon termination of the Contract, whichever is earlier.

FORCE MAJEURE

Purchaser may delay delivery or acceptance occasioned by causes reasonably beyond its control. Seller shall hold such Goods/Services at the direction of the Purchaser and shall deliver them when the cause affecting the delay has been removed.

TERMINATION FOR CONVENIENCE

Purchaser reserves the right to terminate the Contract or any part hereof for its sole convenience. In such event Seller shall immediately stop all work. Seller shall be paid a reasonable termination charge consisting of a percentage of the price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination. Seller shall not be paid for any work done after notice of termination, nor for any costs incurred by Seller which could reasonably have been avoided.

TERMINATION FOR CAUSE

Purchaser may terminate the Contract or any part hereof for cause in the event of (i) any default by Seller or Seller's failure to comply with these Terms and Conditions; (ii) Seller being declared bankrupt, files a petition for bankruptcy or requests the granting of suspension of payments; or (iii) Seller being subject to similar measures in the jurisdiction under which Seller is organized.

ENTIRE AGREEMENT AND MODIFICATION

The Purchase Order, and any documents referred to on the face hereof, constitute the entire agreement between the parties. Neither the Contract nor the Purchase Order may be modified orally. Any modification must be in writing signed by Purchaser.

SEVERANCE

The invalidity or unenforceability for any reason of any part of these Terms and Conditions shall not prejudice or affect the validity or enforceability of the remainder.

WAIVER

Purchaser's failure to insist on performance of any of these Terms and Conditions or to exercise any right or privilege or Purchaser's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.

ASSIGNMENTS AND SUBCONTRACTING

No part of the Contract may be assigned or subcontracted without prior written consent of Purchaser.

COMPLIANCE WITH LAWS

Seller's performance of the Contract shall comply with all applicable laws, and with all rulings, regulations, interpretations, and governmental orders issued thereunder.

ANTI-CORRUPTION AND BRIBERY

Seller will not in connection with the Contract or the sales of Goods/Services or to be sold under it, offer, pay, promise to pay, or authorize the giving of any financial or other benefit to any person for the purpose of obtaining an improper advantage, or otherwise conduct itself in a manner contrary to the applicable PRC anti-bribery laws and regulations, the UK Bribery Act or the U.S. FCPA. Purchaser may terminate the Contract immediately upon written notice where Seller is found to have breached this clause, and Seller shall indemnify Purchaser from all damages, penalties, fines and/or costs of any kind arising from, or relating to, any such breach.

GOVERNING LAWS

The Contract shall be governed by and construed according to the laws of the PRC.

DISPUTE RESOLUTION

Any dispute arising out of or in connection with the Contract including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration conducted under the auspices of Shanghai International Economic and Trade Arbitration Commission in Shanghai in accordance with its rules prevailing at the time of application. The arbitral award shall be final and binding upon the Parties. The losing party shall bear the arbitration costs unless otherwise ruled by the arbitration tribunal.

HEADINGS

Headings to paragraphs are for convenience of reference only and shall not affect the interpretation of these Terms and Conditions.

LANGUAGE

Should these Terms and Conditions be in both versions of English and Chinese, the Chinese version shall prevail.