

General order conditions for pohltec metalfoam GmbH

1. Order placement

For all orders placed by pohltec metalfoam GmbH the verbal order or the order letter of pohltec metalfoam GmbH in combination with these general order conditions is decisive.

pohltec metalfoam GmbH expressly objects to contrary standard conditions of the contractor. They are binding for pohltec metalfoam GmbH only if pohltec metalfoam GmbH expressly agrees in writing. They do not become effective through pohltec metalfoam GmbH making payments or fully or partially executing the order.

2. Order confirmation

The contractor must confirm the order in writing without delay. If pohltec metalfoam GmbH has not received the written order confirmation within a period of 8 days, pohltec metalfoam GmbH has the right to revoke the order.

Changes and additions to the order of pohltec metalfoam GmbH must be specially marked in the order confirmation and they must be confirmed in writing by pohltec metalfoam GmbH to become part of the contract.

Within reasonable limits, pohltec metalfoam GmbH may require the contractor to change the execution of the delivery item. The impacts, in particular with regard to additional and reduced costs and delivery dates, must be adequately taken into account.

3. Prices

The agreed prices are fixed prices for the duration of the order. They include packaging and freight costs.

Eco-friendly packaging materials are preferred.

The place of receipt, unless agreed otherwise, is the main plant of pohltec metalfoam GmbH or the branch named in the order letter. pohltec metalfoam GmbH does not cover any ancillary costs in addition to the agreed prices, unless this has been specifically agreed. If a price is agreed "ex works" or "ex stock", pohltec metalfoam GmbH only covers the cheapest freight costs; all costs accrued until the handover to the freight forwarder, including loading costs and end delivery, are borne by the contractor

If the order letter does not specify prices, the contractor must communicate them immediately. To be effective, the communicated prices require the written confirmation of pohltec metalfoam GmbH.

4. Delivery dates

The agreed delivery dates are binding and must be adhered to by the contractor. The receipt of the goods by pohltec metalfoam GmbH is decisive for compliance with the delivery date. If delivery is not agreed as "ex works", then the contractor must make the goods available in good time taking into consideration the usual time for loading and shipping.

If the contractor becomes aware that the agreed delivery dates cannot be adhered to for whatever reason, pohltec metalfoam GmbH must be notified immediately in writing regarding the reason and duration of the delay. If the contractor fails to make this notification, then he cannot argue that the delay is not his responsibility.

5. Damages

In the event of a failure to comply with the agreed delivery date and failure to set a reasonable grace period, pohltec metalfoam GmbH can also withdraw from the contract and demand damages instead of performance.

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In the event of non-compliance with the deadline on the part of the contractor, the contractor defaults without a reminder. Claiming compensation for damages due to a delay in performance remains unaffected.

As a lump-sum compensation for a delay in performance 0.3% of the agreed net price of the delivery for each calendar day from the delay onwards or from the end of the reasonable grace period applies. This does not affect the right of the contractor to prove that the damage was less and the right of pohltec metalfoam GmbH to claim for the actually incurred higher loss.

As compensation in lieu of performance a lump-sum compensation of 20% of the agreed net price applies. This does not affect the right of the contractor to prove that the damage was less and the right of pohltec metalfoam GmbH to claim for the actually incurred higher loss.

The unconditional acceptance of a delayed delivery or performance does not imply a waiver of the compensation claims pohltec metalfoam GmbH is entitled to.

6. Shipping

Shipping is at the risk and expense of the contractor, who is also responsible for taking out transport insurance at his expense.

The goods must be packaged in such a way that they cannot get damaged during transport and subsequent storage.

pohltec metalfoam GmbH is entitled to return packaging and means of protection and transport and claim adequate reimbursement.

The delivery must include packing slips and delivery notes that contain the order number of pohltec metalfoam GmbH.

Any additional costs arising from non-compliance with the packaging and shipping specifications are borne by the contractor.

7. Over-/under-delivery

Over- or under-delivery of the order amount specified by pohltec metalfoam GmbH are generally not permitted.

If it is industry-specific or customary in the trade, pohltec metalfoam GmbH must be informed of this no later than when the order is confirmed.

8. Invoicing

Invoices must be issued on the day of dispatch at the earliest, in duplicate and with VAT set out separately. They must be sent separately from the goods by post. They must contain information that enables incoming control and booking. If partial deliveries and down payments are agreed, the final invoice must be submitted no later than two weeks after the last accepted delivery with verifiable documents. Payments already made must be listed separately and the remaining balance must be calculated.

pohltec metalfoam GmbH may return invoices that do not comply with these specifications without forfeiting the right to deduction of a discount or any other rights.

9. Warranty

The contractor is liable for defective goods in accordance with legal provisions; this in particular applies to those characteristics of goods as correspond to the state of science and technology and the provisions of public bodies and professional associations.

As an extension of statutory liability the contractor's liability for compensation also includes in the case of defective delivery direct and indirect consequential damages.

The contractor waives the objection of delayed notification of notice of defects not made in time in the case of not immediately recognisable defects. This ensures that not immediately recognisable defects still fully fall under the contractor's liability at a later time.

If defects are detected pohltec metalfoam GmbH has the right to request either elimination of the defect or replacement delivery within a reasonable period.

If the type of supplementary performance chosen by pohltec metalfoam GmbH fails, i.e. the defect is not remedied and a defect-free item is not delivered, pohltec metalfoam GmbH has the right to request either reduction of payment or cancellation of the contract.

Similarly, pohltec metalfoam GmbH has the right to claim compensation instead of performance due to performance not rendered or not rendered as owed.

The contractor is liable for damages due to violation of precontractual or contractual secondary obligations regardless of the aforementioned rights.

The contractor indemnifies pohltec metalfoam GmbH from third-party claims for damages if the damage is due to a defect of the product that was already present when the product was delivered. In this case the contractor bears all costs and expenses, including the costs of any legal action.

10. Payments

Unless expressly agreed, payments are made as follows:

If the invoice is received between the 1st and 15th of the month payment must be made on the 25th of the month; if the invoice is received between the 16th and 31st of the month payment must be made on the 10th of the following month; always taking into account a discount amount of 3%, or within 60 days net after invoice receipt.

In the case of justified notices of defect and an associated retention of payment, the right to discount deduction remains in place until a replacement has been provided or the defect has been remedied.

11. Assignment and subcontractors

The contractor may not assign the payment claim to pohltec metalfoam GmbH, unless the claim is assigned to his principal bank.

The use of subcontractors is not permitted without the consent of pohltec metalfoam GmbH.

12. Place of performance, place of jurisdiction, applicable law

The place of performance for all payment obligations arising from this contractual relationship is Cologne; for deliveries and other services it is the agreed place of receipt.

If the contractor is a merchant, legal entity under public law or special fund under public law, the place of jurisdiction for all legal disputes arising from the contractual relationship and through its conclusion and effectiveness, and for suits filed in connection with cheques and bills of exchange, is Cologne, or if pohltec metalfoam GmbH so wishes, the registered office of the contractor.

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