

General

1. These general terms and conditions of purchase ("GTCP") of Posalux SA, Bienne, Switzerland ("Posalux"), apply to all orders from Posalux, unless both parties have agreed on different conditions in writing in a purchase contract ("Contract").
2. The supplier expressly waives its own general terms and conditions and supplier irrevocably accepts these GTCP by (a) supplier's issuing of any acceptance of a Contract, (b) acknowledgement of an order or order request, or (c) supplier's delivery of any good to Posalux.
3. Orders, contracts, supplements and amendments, which have been made verbally, electronically or by telephone, are only binding if confirmed in writing.

Quotations and order process

4. Quotations submitted by the supplier are binding and include all incidental costs and taxes (transport, packaging, VAT, customs duties, etc.), excluding the transport insurance.
5. The quotations do not constitute an obligation for Posalux to order, even if provided at the request of Posalux. If the quotation is in response to a request of Posalux, it must refer to the request. The supplier must highlight any discrepancies between Posalux's request and the quotation.
6. The supplier shall confirm an order in the form of a written order confirmation within five (5) workdays after receipt. The written order and the written order confirmation constitute together the Contract.
7. The order confirmation shall include the order number, the total price, the applicable VAT, the exact delivery time, the place of delivery and the technical documentation of the goods.
8. If the supplier does not accept the order within the five (5) workdays, Posalux is entitled to cancel the order without the supplier obtaining any right for damages as a result of the cancellation.
9. The supplier may use subcontractors for the performance of its obligations only with the prior written consent of Posalux. The supplier shall be liable for all acts and omissions of its subcontractors as if they were its own acts and omissions.

Delivery

10. The goods shall be adequately protected against mechanical damage and corrosion during the transport. Insulating parts shall be additionally protected against moisture.
11. Each delivery shall be accompanied by a detailed written delivery note, stating the order number, the order status and the description of the goods, the number of parts, the gross weight and the references of Posalux, as well as a label or readily visible marking of another type on the goods.
12. The delivery shall be made in a professional and appropriate manner and with the use of the best-suited materials. The delivery shall comply in particular with the applicable laws, governmental regulations, export control provisions, pertaining technical standards, codes and the Contract.
13. Partial or advance deliveries are permitted only with the prior written consent of Posalux.
14. If the supplier anticipates difficulties with regard to production or delivery, it must notify Posalux and provide information on the reasons and state, if possible, the likely time for delivery. The rights of Posalux as set forth in clause 16 below remain unaffected.
15. Unless otherwise agreed, the supplier bears the risk until acceptance of the goods by Posalux at the place to which the goods must be delivered under the order. All deliveries shall be made DDP ("delivered duty paid" under the INCOTERMS® 2010).
16. To the extent that the supplier violates its duties under this section (Delivery) and/or the delivery does not comply with the Contract, the supplier shall be liable to Posalux for all fees, customs duties, penalty payments with regard to export control or customs and any other damages or expenditures incurred by Posalux as a result of the violation of the duties. If the delivery does not comply with the Contract (delivery date, place, quantity etc.), Posalux additionally reserves the right to (i) reject the acceptance of the goods or store the goods at the expenses of the supplier (ii) and/or claim either damages for non-compliance or withdraw from the Contract.

Acceptance

17. The delivered goods are to be examined as soon as this is appropriate in the normal course of business, at the latest at the time of their subsequent processing or installation.
18. If a delivery has such substantial deficiencies or if it does not comply with the agreed or expected specifications that it is either useless for Posalux or the acceptance cannot reasonably be expected, Posalux may reject the acceptance of the goods, order from a third party supplier and demand compensation for damage.

Invoicing and payment

19. Posalux has to be provided with invoices immediately following the shipping of the goods. Each order has to be invoiced separately, including the information as set forth in clause 4 above.
20. Payments shall be made within 60 days following the receipt of the invoice or the delivery of the good, whichever is later.
21. Each payment is made under reservation of a review of the respective invoice. If invoices are issued flawed, the aforementioned terms of payment will not become effective before the new issued and correct invoice is received.
22. Payments shall in no way be considered as an acceptance or approval of the goods.
23. In the event of goods being defective, Posalux reserves the right to withhold all or part of the payment until the supplier has corrected the defects to the satisfaction of Posalux.

Warranties and guarantee

24. The supplier warrants and guarantees that all delivered goods comply with (i) the agreed or expected specifications, (ii) all applicable laws, regulations, norms and other public authority directives in force at the time of delivery, and (iii) all applicable standards of recognised standardisation organisations.
25. Any complains about deviations from the agreed or expected quality as set forth in clause 24 above ("Defects") will be reported within a reasonable time to the supplier.
26. The supplier provides for a guarantee for the goods of 24 months, starting from the date of delivery at the agreed place of delivery.
27. In case of Defects, the supplier shall, at his own costs and free of charge, correct the Defects by repair or delivery of new goods or spare parts.
28. If the supplier does not start without undue delay after Posalux's request to correct the Defects, or the supplier is not in a position to correct the Defects within a reasonable time period, Posalux has the choice, at its own discretion, to (i) repair the goods itself or have the goods repaired by a third part, all at the costs and expenses of the supplier; (ii) have the purchase price reduced in the amount of the decrease in the good's value, or (iii) return the goods, order from a third party supplier and demand compensation for damages and accrued additional costs. Further claims for damages remain unaffected.
29. Any indirect advantages of Posalux as a result of the correction of the Defects shall not be compensated.
30. The supplier provides for either a guarantee for the corrected goods of 12 months, starting from the date of acceptance by Posalux, or the ordinary guarantee as set forth in clause 26 above, whichever is longer.
31. The supplier guarantees that spare parts for the delivered goods are available without restrictions during a period of at least ten (10) years.

Product liability

32. In the event that customers or third parties assert claims against Posalux based on product liability, the supplier is required to indemnify Posalux from such claims if and to the extent the harm has been caused by a Defect in the goods delivered by the supplier.

Third party rights

33. The supplier shall indemnify, defend and hold Posalux harmless from and against all losses resulting from claims and actions of third parties related to alleged infringements of third party rights by goods delivered by the supplier and its services. The supplier shall defend Posalux against such claims and actions as Posalux may reasonably request.

Development actions, supplier quality evaluation and rating system

34. When a corrective or development action for the delivered goods is required by Posalux, the supplier shall complete a report within ten (10) business days, including the analysis of the causes, the objectives of the action, a step plan and deadlines for the implementation of the action, the costs of the action and possible consequences for the goods and their technical specifications.
35. Posalux may evaluate its suppliers to maintain objective evidence of the quality of the goods or services provided. Annual rating evaluations may be performed and made available to the supplier upon request.

Limitation of liability

36. The supplier is liable to Posalux for all damages caused by itself, its employees or subcontractors to Posalux without regard to any fault, except for consequential damages which shall be excluded.

Confidentiality

37. All technical data, designs, documents (drawings, manufacturing, testing and delivery specifications, etc.) and other information provided to the supplier by Posalux ("Confidential Information") may only be used for the purpose the Contract. The Confidential Information and any updates, copies or corrections thereof, remain the exclusive property of Posalux.
38. The supplier shall hold all Confidential Information in strict confidence and shall not disclose any Confidential Information to any third party without Posalux's prior written consent.
39. The supplier shall use not less than reasonable efforts to protect the Confidential Information and to prevent disclosure of the Confidential Information to any third party.
40. The supplier shall delete or return the Confidential Information upon first request of Posalux.
41. The obligations of these clauses 37-40 continue to be in effect beyond the duration of the Contract.

Disputes and place of jurisdiction

42. All Contracts concluded under the GTCP as well as these GTCP are governed by and construed in accordance with the substantive laws of Switzerland, excluding rules on conflict of laws and the United Nations Convention of Vienna on the International Sale of Goods. The exclusive place of jurisdiction for all disputes out of or in connection with these GTCP and any Contract shall be at the registered office of Posalux.
43. Differences of opinion do not entitle the supplier to interrupt the work and to refuse the performance any work or deliveries pursuant to the Contract.